



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, LRE

Introduction

The tenant has applied to cancel a notice ending tenancy and an order that he be allowed to change the locks to the door of the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

At the start of the hearing the landlord confirmed receipt of the tenant's evidence.

The tenant stated he did not receive the landlord's evidence package, which the landlord testified was placed under the tenant's door on November 16, 2010. The tenant agreed that he most often receives his mail by having it placed under his door. The parties also confirmed that at times the tenant can pick up his mail at the front desk of the building.

As there was some dispute in relation to service of the evidence and what I found to be an inconsistent method of mail delivery in the building I found that the landlord's evidence had not been sufficiently served to the tenant. At the start of the hearing the landlord was able to hand-deliver a copy of their evidence to the tenant, who was present in the same building. Attempts to provide the advocate with copies of the evidence via facsimile, failed. Therefore, I determined that the landlord was at liberty to reference and read from any of his evidence; the tenant had the evidence before him and I relied upon the oral testimony of the landlord.

The tenant wished to have his witness testify. As this testimony was in relation to events that had occurred in relation to a previous dispute between the witness and landlord, I found that his testimony would not be relevant to the issues before me and I determined that the testimony was not required. Any dispute in relation to another occupant was not before me during this hearing.

Issue(s) to be Decided

Should the Notice ending tenancy for cause issued on October 18, 2010, be cancelled?

Background and Evidence

The tenant has lived in the rental unit since February 2008. He rents a room in a single occupancy building.

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on December 1, 2010. The reasons stated for the Notice to End Tenancy were that the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord and that the tenant has breached a material term of the tenancy that was not corrected within a reasonable time of written notice given to do so.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- That on 2 previous occasions, in April and June, 2010, the locks on the tenants room were changed with the landlord's permission;
- The tenancy agreement signed by the parties included clause 12 which prohibits the tenant from changing the locks of the rental unit without prior permission of the landlord;
- The tenant was given prior written notice of entry required on September 27, 2010, for pest control purposes;
- When entry was attempted on September 27 the landlord could not enter as the lock had been changed by the tenant without permission of the landlord;
- That the tenant was given written warning on September 27 that he must provide the landlord with a key within 7 days or face possible eviction and that this note was served by sliding it under the tenant's rental unit door;
- That on October 4, 2010, the date of the rescheduled pest control inspection, the technician was able to gain access to the unit;
- That sometime in early November the tenant provided the landlord with a key to his rental unit;
- That on October 5, 2010, the occupant below the tenant submitted a written report of disturbances and drug dealing by the tenant and that the landlord did not discuss this with the tenant as their relationship is so eroded; and
- That a police officer wrote a note that the tenant admitted to the officer that he is allowing 2 known, dangerous drug dealers into his room which the landlord finds has placed the other occupants at risk.

In April the tenant reported his lock had broken and as there was to be a 3 day delay for repair by the landlord, the tenant was given permission to obtain and install a lock and provide the landlord with a key and receipt for reimbursement; which he did. In June the landlord changed the lock for the tenant, as it was again broken. The landlord confirmed that the lock has been changed on 3 occasions; on 2 of those occasions with the landlord's permission.

The tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- That after he changed the locks to his unit in September he had approached the landlord's agent requesting reimbursement and to give him the key but as the agent refused to reimburse him the tenant withheld the key from the landlord;

- That he did not receive the September 27 warning letter referenced by the landlord and that the first time he had seen that letter was when he reviewed the evidence delivered to his door during this hearing;
- That sometime after he had changed the lock he saw the landlord and approached him requesting reimbursement for the lock, that the landlord immediately agreed and at this point the tenant gave the landlord the key; later the landlord did reimburse the tenant for the cost of the lock;
- That the police statement is unreliable as the copy of the statement before the tenant was not signed by the officer and is a document that could have been written by anyone;
- That the tenant completely denied engaging in any illegal activity; and
- That the landlord is retaliating as the tenant acted as an advocate for another occupant in a recent dispute resolution hearing and that the notice issued to that occupant was found to be invalid.

The tenant is preparing a submission for a possible future hearing and fears that the landlord will enter his room without authorization to steal evidence. The tenant requested an order that he be allowed to change the locks to his unit and retain the keys.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the landlord has cause to end this tenancy.

There is dispute between the parties in relation to the service of documents; the tenant confirmed that he receives most of his mail that is slipped under his door, but that at times he will receive mail from the front desk. The landlord was unable to provide evidence of service by the method that appears to be used for most of the mail and I have found that this method of service for critical documents that could result in eviction is less than reliable.

The parties disputed service of the September 27, 2010, letter of warning read into evidence by the landlord and I find, on the balance of probabilities that the tenant was not sufficiently served with that letter. Even if the tenant had been served with the letter I would have found that within a reasonable period of time the landlord was provided with a key to the room by the tenant. The landlord was able to enter the room on the one occasion required after September 27, 2010, in order to complete an October 4 inspection for pests and there is no evidence that further entry was thwarted by the tenant. Therefore, I find that the notice issued for this reason is of no force or effect.

In relation to the reason on the notice that the tenant has jeopardized the lawful right or interest of the landlord or another occupant due to illegal activity; there is no evidence before me that this has occurred. The one written complaint made by another occupant was not investigated and the police statement read by the landlord was not signed. A report of illegal activity that is not confirmed is of no value and I find that the note allegedly signed by an officer is of no weight as it was not signed. Therefore, in the absence of any evidence that the tenant is in fact engaging in illegal activity, I find that the notice issued for this reason is of no force or effect.

This tenancy will continue until it is ended as provided by the Act.

During the hearing I denied the tenant's request that he be provided an Order allowing him to change the locks. The tenant must comply with the Act and tenancy agreement and not change the locks without permission of the landlord or, in the absence of a response required by the landlord as provided by section 33(1)(iv) of the Act, emergency repair to locks, he may undertake the repair himself. If that occurs the tenant must immediately provide the landlord with a copy of the key and the landlord must comply with the Act in relation to reimbursement to the tenant.

During the hearing I suggested that the landlord consider the issues experienced in relation to service of documents to the tenant and alternate methods of service that might be available as provided by the Act. The tenant suggested that the landlord personally serve him and that he would be willing to sign, acknowledging receipt of documents.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy, dated October 18, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

The tenant's request for an Order that he be allowed to change the rental unit lock is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 24, 2010.

Dispute Resolution Officer