

DECISION

Dispute Codes:

CNC, OPC, MND, MNDC, MNSD

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated September 27, 2010, a copy of which was submitted into evidence. The Notice indicated that the reasons for terminating the tenancy was that the tenant had been repeatedly late with rent, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, put the landlord's property at significant risk, caused extraordinary damage to the landlord's property and failed to repair damage caused by the tenant .

The hearing was also to deal with a cross application by the landlord seeking an Order of Possession and monetary order for damages to the suite caused by the tenant in the amount of \$10,219.29.

Both parties appeared and gave testimony in turn.

Issue(s) to be Decided

The tenant is disputing the basis for the Notice and the issues to be determined based on testimony and evidence is:

- whether the criteria to support a One-Month Notice to End Tenancy under section 47 of the *Residential Tenancy Act*, (the *Act*), has been met, **or**
- whether the notice should be cancelled on the basis that the evidence does not support any one of the causes shown.

Burden of Proof: The burden of proof is on the landlord to show the notice was justified and to prove that the monetary compensation is warranted under the *Act* .

Background and Evidence

The tenancy began in September 2002 and a security deposit of \$525.00 was paid. The rent was \$1,050.00. However, the landlord purported to have imposed a rent

increase to 1,155.00 per month in a letter dated July 23, 2006. The tenant testified that she continued to pay the former rent of \$1,050.00.

The tenant's application stated that the landlord's reasons for ending the tenancy were not true.

The landlord testified that the tenant was chronically late paying rent and provided evidence dating back to January 2006 to show that the rent was continually being paid after the first day of the month and in some cases, well into the month.

The tenant testified that this was an accepted practice and should not be suddenly used to terminate the tenancy given that the landlord did not give the tenant warning and a chance to comply with the Act and agreement.

The landlord testified that there were three incidents of flooding during the tenancy and the tenant failed to alert the landlord in a timely manner, particularly for the last incident, which involved a serious leak in the roof. The landlord's position was that the tenant had ignored long-term leakage before the problem was inadvertently discovered by the landlord and this had resulted in serious mould and damage to the infrastructure, for which the landlord held the tenant responsible. The landlord's position was that the incident in question seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, put the landlord's property at significant risk, caused extraordinary damage to the landlord's property and that the tenant had failed to repair damage she caused.

The tenant denied causing this damage and pointed out that the roof was compromised by a raccoon infestation of which the landlord should have been aware. The tenant testified that she did not realize that the walls were being soaked by water infusion because the room in question was only used for storage and the walls were not visible. The tenant testified that the landlord was remiss in failing to inspect and maintain the building. The tenant also stated that once she realized there was a leak, she put buckets under the drips and within 3 days the landlord was aware of the situation. The tenant stated that the damage shown in the photos occurred after the roof was further destroyed by the landlord's roofing crew puncturing it in the soft spots during the repairs. The tenant's position is that she is not responsible for the damage caused by the failure of the roof.

The landlord testified that the tenant made a practice of storing clothing and belongings in the common areas and that this posed a fire risk and a risk of vermin infestation. The landlord testified that the tenant was warned to remove the items and submitted a copy of a letter dated July 23, 2006 in which the landlord demanded that the tenant cease cluttering up the common areas. The landlord testified that this conduct persisted.

The tenant denied that she has continued to store belongings in the common areas after being warned not to do so..

In regards to the landlord's monetary claims, the landlord testified that these damages arose because of additional repairs that would otherwise have been prevented had the tenant immediately reported the roof problem and the overflowing bathroom fixtures.

Analysis

I find that the persistent late payment of rent did occur, but that the practice had apparently been accepted by the landlord through over the years and this became the normal way of paying. That being said, the tenant is now aware that rent is due no later than the first day of the month and that henceforth, failure to pay the rent on time will jeopardize this tenancy because late payment is a violation of section 26 of the Act.. This decision serves as a written warning to the tenant of this fact.

In regards to the causes put forth as warranting terminating the tenancy under section 47(1)(d)(ii) and 47(1)(d)(iii), I find that the Act imposes a high standard that must be met in proving that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and put the landlord's property at significant risk. I find that to meet this criteria, a genuine hazard must exist and the tenant must be solely to blame.

I find that the problems with the roof were not caused by the tenant and that the tenant had no responsibility to do any repairs. Maintenance and repairs of plumbing fixtures and the roof both fall within a landlord's responsibility under the Act. I find that the landlord must act with due diligence in regards to his maintenance obligations including regular inspections. However, it is still incumbent on a tenant to report any problems that arise in a timely manner, particularly when it involves an emergency or puts the infrastructure at risk, even in cases where the tenant had no part in causing the deficiency or failure.

In regards to the tenant's storage of items in inappropriate areas, I find that the threshold to terminate a tenancy under section 47(1) (d) is high and would require more than merely untidiness and inconvenience. While the landlord speculated that the situation could cause a fire or vermin infestation, I find that no incidents of this nature had occurred and it is difficult to gage the risk level merely relying on the landlord's verbal testimony, especially as it was disputed by the tenant.

In this instance I found it was not necessary to determine which party's position was more credible or which set of "facts" was more believable. In short, I find that the party seeking to end the tenancy, that being the landlord, had not sufficiently met the burden

of proof to establish that the criteria under sections 47(1)(d)(ii) or 47(1)(d)(iii) of the Act were satisfied based on the evidence before me.

Given the evidence, I find that the One-Month Notice to End Tenancy for Cause must be cancelled.

Section 62(2) of the Act gives a Dispute Resolution Officer the authority to make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act and to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Notwithstanding the fact that the tenant's conduct and failure to immediately report repair issues did not support the landlord's termination Notice, I find that the tenant is required to comply with section 32 of the Act, as is the landlord. A contravention of section 32 of the Act does not function on its own to justify ending a tenancy because it enlists different criteria with a lower threshold than a serious violation under section 47(1)(d)(ii) would. Section 32 imposes basic responsibilities on the tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

In this instance I find that based on the testimony and evidence of both parties the tenant may not have been fully in compliance with section 32 of the Act by storing items safely and reporting repair issues as they arise.

Accordingly I find it necessary to issue an order requiring that the tenant comply with the legislation by reporting repair problems to the landlord and not storing possessions in areas that must be kept clear for safety reasons, pursuant to section 32 of the Act..

I must point out that, should the tenant fail to comply with this order the landlord would be at liberty to issue a One-Month Notice for Cause under section 47(1)(l). This section of the Act states that a landlord may issue a Notice to End Tenancy for Cause if the tenant has not complied with an order of the director within 30 days of the later of the following dates:

- (i) the date the tenant receives the order; and
- (ii) the date specified in the order for the tenant to comply with the order.

Under section 29(2) of the Act the landlord is entitled to inspect the unit on a monthly basis, and I encourage the landlord to do so with proper written notice to ensure that maintenance issues are addressed in compliance with section 32.

In addition to the above, I find that the rent increase imposed by the landlord effective October 1, 2006 was not compliant with the Act and is therefore of no force nor effect.

Conclusion

In light of the fact that the landlord has failed to sufficiently prove that the criteria listed under section 47 has been satisfied, I hereby order that the One-Month Notice to End Tenancy dated September 27, 2010 be cancelled and of no force nor effect.

On my authority under section 62(1)(b) of the Act, the tenant is hereby ordered to comply with section 26 of the Act by paying rent no later than the first day of the month. The tenant is further ordered to comply with section 32 of the Act to consistently maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and common areas in future and to report any significant repair issues that may pose a safety risk or risk of damage to the landlord immediately. This should be done in written form if possible.

This order must be served on the tenant and failure to comply could warrant a One Month Notice for Cause to be issued by the landlord under section 47(1)(l).

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 2010.

Dispute Resolution Officer