Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, MNDC, OLC, PSF, RR

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated October 27, 2010, and order to compel the landlord to comply with the Act, an order to force the landlord to provide services or facilities required by law and an order for money owed or compensation under the Act. Both parties appeared and gave testimony in turn.

Issue(s) to be Decided

The issue to be determined, based on the testimony and the evidence, is whether the One-Month Notice to End Tenancy is warranted or whether the notice should be cancelled on the basis that the evidence does not support the cause shown. Also to be determined is whether or not the landlord should be ordered to comply with the Act and to restore services and facilities required by law and whether the tenant is entitled to monetary compensation. The burden of proof is on the landlord to establish that the Notice was justified and the burden of proof is on the tenant for the remainder of the issues.

Background and Evidence

The landlord testified that the tenancy began in 2001 and the tenant testified that it began in 2000. There was no written agreement, however current rent was $600.00 including utilities and a deposit of $225.00 was paid. The landlord testified that until recently the tenant functioned as a property manager fulfilling the role of agent for the landlord and also did repairs and renovations for which he was paid. This employment contract was also verbal. The landlord had dismissed the tenant from his duties as of September 2010 and is of the opinion that this would constitute a valid reason under the Act to end the tenancy as well.

The landlord testified that there were also problems with the tenant's conduct as well. A copy of the One-Month Notice to Notice to End Tenancy for Cause was submitted into evidence which indicated that the tenant had allegedly significantly interfered with or

unreasonably disturbed another occupant or the landlord, that the tenant had put the landlord's property at significant risk and that the tenant's rental unit was part of an employment arrangement that has ended and the unit is required for a new employee.

The landlord stated that the tenant had tampered with the thermostat, stored a non-operational vehicle in the yard without permission, parked a motorcycle on site which was not allowed and parked his work truck on the street in front of the house. The landlord objected to the clutter on the property where the tenant had piled unsightly refuse such as wood and other items. The landlord stated that the tenant had utilized common exterior areas for the tenant's own storage and leisure by placing patio furniture in front of the house in an area that was not part of the tenant's rental property. The landlord submitted photos of the areas in question.

The landlord alleged that the tenant failed to keep his unit sanitary and offensive odour could be detected from the open door. The landlord testified that the tenant operated a business out of the suite which the landlord believes would invalidate his home insurance. The landlord also took issue with the fact that the tenant refused to follow the rent payment method required by the landlord and refused to respond or communicate with the landlord. The landlord felt that he was impeded from inspecting the unit by the tenant.

In explaining why the landlord's concerns about some of the above matters had not been addressed by the landlord for several years, he stated that this was due to the fact that the tenant enjoyed more freedom and privileges as a property manager. The landlord stated that, now that the job portion had ended, the services and facilities included would revert back to what he was entitled as a mere tenant.

The tenant acknowledged that he had added a second thermostat to the heating system, but stated that this was necessary because of imbalances in the temperature which overheated his suite. The tenant agreed to disconnect the thermostat and not interfere with the original thermostat in future.

The tenant stated that he was in the process of restoring the vehicle parked in the yard and that it could be driven and would be insured as well. The tenant stated that this van was on a parking pad and this had never been questioned by the landlord in years past.

The tenant agreed to remove the parked motorcycle and to remove discarded wood and to ensure that no pathways were blocked. The tenant's position was that he had been using the exterior area adjacent to his suite for the duration of his tenancy and this was part of the rental premises he was paying for. The tenant was not willing to remove all of his patio furniture, storage cabinet or other possessions as these had been in the same spot without complaint for a long time and was part of the rental premises .

The tenant disputed that he operated a business from his home and stated that he was self-employed as a landscaper and only used his suite address for the purpose of receiving mail such as payments from customers for work performed. He testified that he does not have clients or staff coming to his home. In regard to the tenant's decision not to mail the pre-authorized cheques, the tenant stated that he gave the payments to occupants of the main suite who were relatives of the landlord as he feared the risk of mailing them. However, he agreed to mail pre-authorized cheques to the landlord for this year as required.

The tenant challenged the allegation that his tenancy was integrated into an employment relationship, and stated that the landlord paid him separately for extra duties performed on behalf of the landlord, but in fact had not actually paid him the amount that was owed for his labour for the past two years. The tenant stated that he intends on seeking compensation for these wages through the legal system.

The tenant stated that the landlord had also attempted to impose a large rent increase that was not compliant with the Act. The landlord stated that the rent increase reflected the market rate for the unit because the tenant had been receiving a rent reduction for services rendered by the tenant under an employment arrangement which had recently ended.

Analysis

I find that the tenant was willing to address the majority of the landlord's concerns including:

- removing the extra thermostat, the parked motorcycle and the discarded wood,
- sending of pre-authorized cheques and
- ensuring that no pathways are blocked.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that (i) are required or prohibited under this Act, or; (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities. (my emphasis)

Under normal circumstances, specific issues, such as which facilities are part of the tenancy contract, where vehicles may be parked, what duties and responsibilities the tenant must assume and other details about privileges or restrictions affecting the tenancy, would all be explained in a written tenancy agreement.

Section 13 of the Act requires that a landlord prepare in writing every tenancy agreement entered into and within 21 days the landlord must give the tenant a copy of the agreement. The Act also specifies that a tenancy agreement must comply with the Act and regulations and set out standard terms as well as:

- the correct legal names of the landlord and tenant;
- the address of the rental unit;
- the date the agreement is entered into and the tenancy starts;
- the address for service and telephone number of the landlord or agent;
- the agreed terms about whether the tenancy is for a fixed term or periodic tenancy
- the amount of rent payable and whether it rent varies with the number of occupants
- what day in the period that the rent is due;
- which services and facilities are included in the rent;
- the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(my emphasis)

I find that in this instance, the landlord did not comply with the Act by creating a written tenancy agreement containing the above data. However, according to the Act, oral terms contained in verbal tenancy agreements may still be recognized and enforced. Section 1 of the Act, defines “tenancy agreement” as follows:

> *"tenancy agreement**"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

In situations where a party alleges a violation of a tenancy term which is not in writing, it is difficult to determine whether such a verbal term existed in the agreement.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if ; (a) the term is inconsistent with this Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that any time the nature or existence of a verbal term is disputed, it will likely be determined to be unclear and this would make enforcement impossible.

I find that unwritten tenancy terms can often be clarified based on what was historically accepted and followed by the parties in the past.

In regard to the vehicle parked in the yard I accept that a parking pad was placed in that location with the landlord's permission. It is clear that there was no prior objection to the presence of the vehicle parked there. Notwithstanding the above, I find the parking pad was not meant to be for storage of a non-operational vehicle nor to be used for a place to work on or repair vehicles. Therefore, unless the tenant ensures that it is operational, licensed and insured within 2 months, the van must be permanently removed.

In regard to the use of the exterior area adjacent to the tenant's door, I find that the tenant's free use of this area had not been previously challenged by the landlord. I find that so long as the tenant does not impede pedestrian access to the rear yard and keeps the area tidy, there is no valid reason why it should suddenly be designated as off limits. This also applies to the patio furniture arrangement at the front of the property.

In regard to the allegation that the tenancy was part of an employment contract, I find that the landlord did not submit evidence to confirm this allegation. If the employment duties were integral to the terms of the tenancy, I find that it would follow that the landlord should have included such terms in a written agreement.

I find that the landlord also failed to offer sufficient evidence to support the allegation that the tenant was not maintaining his unit in a safe and sanitary manner or that the tenant was using the residence from which to operate a commercial enterprise affecting the building's insurability.

In regard to ending a tenancy for significantly interfering with or unreasonably disturbing another occupant or landlord, I find that the threshold under section 47(1)(d)(i) is high. The disturbance or interference must be sufficient to seriously impinge on the quality of life and other resident's right to quiet enjoyment of their rental unit or common areas. I find that the tenant had rectified the problem with moving the thermostat and there was not enough evidence offered to prove other significant or unreasonable interference.

Given the above, I find insufficient evidence to prove that the One-Month Notice to End Tenancy was warranted and I find it must be cancelled.

In respect of the landlord's stated intention to increase the tenant's rent to "market rate", I have already found insufficient evidence to conclude that the tenancy, including the rental rate, was affected by integrated employment terms. I find that section 43 of the Act allows a landlord to impose a rent increase only up to the amount calculated in accordance with the regulations. Part 4 at paragraph 22 (1) states that for the purposes of section 43 (1) (a) of the Act *[amount of rent increase]*, a landlord may not

impose a rent increase that is greater than the following calculation : percentage amount = inflation rate + 2%. In 2010 the allowable rent increase was 3.2%. Accordingly, I find that the Notice of Rent increase imposed by the landlord is not compliant with the procedure nor the amount allowed under the Act or Regulation and this increase is therefore of no force nor effect.

In regard to permitting the landlord to periodically access the unit for the purpose of an inspection or repairs, I find that section 29 of the Act permits a landlord to enter a rental unit as necessary provided:

(a) the tenant gives permission at the time or not more than 30 days before the entry;or

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information: (i) the purpose for entering, which must be reasonable; (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees; or

(f) an emergency exists and the entry is necessary to protect life or property.

Section 90 of the Act provides that a document posted on the door is deemed to be received on the 3rd day after it is attached or if given by leaving a copy of the document in a mail box or mail slot, so three days must be added to the 24-hour notification once the notice is posted.

Conclusion

Based on the evidence, I hereby order that the One-Month Notice to End Tenancy of October 27, 2010 be cancelled and of no force nor effect and that the rental rate of the unit will remain unchanged unless a valid Notice of rent increase is served in compliance with the Act. I order that the existing use of the area outside the tenant's door for seating, a barbeque and neatly stored items, not including vehicles, is permitted provided the tenant does not block pedestrian access. Finally I find that the tenant is entitled to be reimbursed for the cost of filing this application in the amount of $50.00 and the tenant will deduct this amount as a one-time abatement from the next rental payment owed to the landlord.

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: December 2010.

Dispute Resolution Officer