Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end the tenancy.

The hearing was conducted via teleconference and was attended by the tenant's agent and the landlord's agent.

The landlord's agent did not request an order of possession during the course of the hearing.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord submitted a copy of a tenancy agreement and addendum signed by the parties on December 19, 2006 for a 1 year fixed term tenancy that began on December 1, 2006 and converted to a month to month tenancy on December 1, 2007 for a monthly rent of $700.00 due on the 1st of the month, a security deposit of $350.00 was paid.

The landlord submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause dated November 22, 2010 with an effective date of December 22, 2010 citing the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord has submitted several photographs of the tenant's rental unit and balcony, some of which show the condition of the rental unit prior to the landlord's requests to have the tenant clean the rental unit and balcony, some show the condition after the landlord had conducted a "re-inspection".

The landlord has also submitted a substantial volume of correspondence from the landlord to the tenant referencing specific clauses of the tenancy agreement and

addendum in relation to the reasons the landlord issued the 1 Month Notice to End Tenancy and warnings to have the tenant comply with these sections or that non-compliance may result in an end to the tenancy. The clauses are:

1. Tenancy Agreement Section 10(2) –
    a. The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. The tenant is not responsible for reasonable wear and tear to the residential property.
    b. If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may seek a monetary order through arbitration under the Residential Tenancy Act for the cost of repairs, serve a notice to end tenancy, or both.

2. Tenancy Agreement Addendum Section 5(1) – All luggage, vehicles, or other property of the tenant, stored on the residential property shall be kept in safe condition in proper storage areas and shall be at the tenant's risk for loss, theft or damage from any cause whatsoever.

The landlord contends that these clauses are material terms of the tenancy and the tenant has been warned on several occasions to comply with these sections of the tenancy agreement and addendum and clean his rental unit, particularly steam clean the carpets; stove and oven; overcrowded balcony with dead plants.

In the hearing the agent's testimony centred primarily on the storage of pots/pans and woodworking supplies on the balcony and the condition of the carpets in the rental unit. The landlord acknowledges that the tenant had complied with their requests to clean the stove; oven and kitchen counter space.

Analysis

Section 47(1)(h) of the *Act* allows a landlord to end a tenancy if a tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The landlord contends the tenant has breached two material terms of the tenancy. First, the landlord alleges the tenant has failed to maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit, and secondly that the tenant has failed to store his property in proper storage areas.

In order to assess the materiality of a term Residential Tenancy Policy Guideline 8 states that a material term is a term that the parties agree is so important that the most trivial breach of that term gives the other party the right to end the tenancy. The

guidelines go on to say that just because the parties have put the terms in the agreement and/or state that they are material does not necessarily qualify the terms as material. And finally the guideline states “The arbitrator will look at the true intention of the parties in determining whether or not the clause is material.”

In relation to the landlord’s claim that the term that requires the tenant to maintain the rental unit to reasonable health, cleanliness, and sanitary standards I find the term allows both of the parties to establish two very distinct meanings for “reasonable standards”.

This vagueness also allows for either party, in this case for example, the landlord to alter that standard at any point during the tenancy. While these terms are also outlined in Section 32 of the *Act*, I find that if a landlord is to rely on this section to end a tenancy the condition of the rental unit must be sufficiently unreasonable that the mere condition puts the landlord’s property at significant risk, not simply that the carpets or oven may be dirty or, in the alternative, that additional terms have been added to the tenancy agreement to define those standards at the outset of the tenancy.

In relation to the landlord’s assertion that the tenant has failed to store belongings in proper storage areas, I note the landlord testified in the hearing that tenants are not automatically provided with storage lockers when they have a tenancy agreement but rather only as lockers become available.

This term in the agreement addendum, I also find to be vague. The term does not identify that belongings must be stored in specific areas of the building or within the rental unit itself, excluding the balcony but rather in “proper storage areas”. The term does not provide a definition of “proper” or who would determine what is “proper”.

In addition, if the landlord’s intent is that tenants should only store their belongings in designated storage lockers provided by the landlord, it is unclear what those tenants who are not provided storage lockers are suppose to do or if the landlord would have the authority to not allow them to store things *within* the rental unit or on the balcony.

While I accept that through the written correspondence with the tenant the landlord has provided the tenant with the landlord’s versions of what is reasonable and what is proper but as noted above I find that vagueness of the two terms relied upon renders it impossible for a third party to determine what were the true intentions of the parties at the time the agreement was entered into.

In addition, again because of the vagueness of the terms, I find it would be difficult for either party to this dispute, and again a third party, to determine what constitutes a “trivial” breach of the term and therefore a breach of sufficient magnitude to end the tenancy.

For these reasons, I find the landlord reliance on these terms, as written, cannot be considered material terms of this tenancy agreement and therefore cannot be relied upon by the landlord to end the tenancy.

I do note, however, that the landlord has made it clear to the tenant that they feel that the condition of the rental unit during the tenancy will contribute to the overall condition of the unit and they may be asserting that these conditions will lead to landlord seeking damages for unreasonable wear and tear, at some future date.

Conclusion

For the reasons note above, I grant the tenant's Application to cancel the 1 Month Notice to End Tenancy for Cause issued on November 22, 2010 and find the tenancy in full force and effect.

As the tenant was successful in his application I find that he is entitled to recovery of the $50.00 filing fee for this dispute and order that he may deduct this amount from his next rent payment, in accordance with Section 72(2)(a).

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 14, 2010.

Dispute Resolution Officer