Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, LAT, FF, O

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated January 12, 2011. The Tenant also applied for the following:

- An Order permitting the Tenant to change the locks and to recover the filing fee for this proceeding;
- A ruling as to whether tenants of the rental property can put locks on the interior doors of the rental unit;
- An Order that the Landlords not allow other tenants to smoke on their balconies; and
- A declaration that a number of terms of the tenancy agreement are invalid or alternatively a declaration that the tenancy agreement as a whole is invalid.

RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that the matters listed above are unrelated to the Tenant's application to cancel a Notice to End Tenancy and as a result, they are severed from his application in this matter.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on October 1, 2010 and expires on March 31, 2011. On January 12, 2011, an agent for the Landlords served the Tenant with a One Month Notice to End Tenancy for Cause dated January 12, 2011 by posting it on the rental unit door. The grounds stated on the One Month Notice were as follows:

- The Tenant or a person permitted on the property by the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Parties agree that on January 7, 2011, the Tenant's kitchen sink overflowed and that the Tenant discovered this at approximately 8:00 a.m. The Tenant said he cleared up the water and had no reason to believe there was any further problem so he did not report it to the property manager. The Landlords' agent said that at approximately 12:30 pm she received an emergency call from the occupants of the suite below the Tenant's rental unit that water was dripping from their ceiling and kitchen light fixture and their carpets were saturated with water.

The Landlords' agent said the flooded suite was inspected by her co-manager who was concerned about the amount of water that had flooded into the suite and he believed the water was coming from the rental unit directly above. Consequently, the co-manager went to the Tenant's rental unit, advised the Tenant that there was water leaking into the suite below and asked for access to the Tenant's suite to determine where the water was coming from. The Landlords' agent said the Tenant advised the co-manager that the kitchen sink had overflowed, that there was no emergency and that as a result, he would not give the Landlords' agent access to the rental unit. The Parties agree that the co-manager tried to gain entry to the rental unit at that time with his key but was prevented from doing so because there was a lock on the other side of the Tenant's door.

The Landlords' agent said her co-manager told her what had transpired and as a result, she contacted the Tenant by telephone to advise him that it was urgent that someone be able to access the rental unit to determine the source of the water leak as well as to determine the extent of any water damage. The Parties also agree that it was the Tenant's position during that telephone conversation that the leak from the sink overflowing was not an emergency defined by the Act and therefore the Landlords' agents were not entitled to enter without giving him a written Notice of Entry under s. 29 of the Act. The Landlords' agent said she then received what she felt was a threatening e-mail from the Tenant on January 7, 2011 in which the Tenant stated (in part) that

> "any entry into my suite without proper notice will be deemed as illegal and I will respond strongly. Ignoring my warnings will result in very negative consequences for management, the people who make illegal entry and for the owners of the building."

As a result, the Landlords' agent said she tried to give the Tenant a written 24 hour Notice of Entry on January 7, 2011 however he refused to take it and as a result, she posted it on his door. The Notice stated that the Landlord would be entering on January 12, 2011 between 8:00 a.m. and 9:00 p.m. in order to "inspect for damages caused by

water" and for the purpose of conducting a routine inspection. The Landlord's agent said the Tenant then advised her that he would not accept this Notice because in his view it was invalid because it did not specify a time for the proposed entry. The Landlords' agent said she contacted the Tenant by telephone on January 11, 2011 to try to arrange a convenient time for the inspection, however the Tenant would not agree to a time and refused to grant the Landlords' agent access on January 12, 2011. Consequently, the Landlords' agent said the Tenant was served with the One Month Notice to End Tenancy. The Landlords' agent said she did not serve any further Notices on the Tenant because he had been uncooperative, threatening and abusive and she was in fear of him.

The Landlords argue that given the amount of water in the suite below the rental unit their reasonably believed there was an emergency and had a duty to protect the safety of the Tenant, other occupants of the rental property and the interests of their property insurer. The Landlords also argued that the Tenant's claim that there was no emergency was contradicted by the amount of water that had leaked into the suite below him and the Tenant was not experienced to make an opinion that there was no property damage or threat to others' safety. The Landlords also argued that a material term of the tenancy agreement (clause 14) requires the Tenant to report hazards such as water leaking from the rental unit to the Landlord which he did not do.

The Tenant argued that s. 33 of the Act specifies that an emergency only occurs when there is a break in the water pipes or a leak in the roof and neither of those things occurred. Consequently, the Tenant said the Landlords' agent did not have a valid reason for seeking entry to the rental unit on January 7, 2011. The Tenant also argued that it was the Landlords' agent who was intimidating when he tried to force his way into the rental unit.

The Tenant admitted that he did not report the overflowing sink to the Landlords' agent because he said he had no reason to believe that there were any problems after he had cleaned the water up in his unit. The Tenant also admitted that he was advised by the co-manager and the Landlords' agent that there was flooding in the unit below him but argued that they had no evidence to prove that the flooding was from his unit or that it posed a "continuing threat" to the safety of other occupants or the rental property. The Tenant further argued that if the Landlords had real concerns about the property damage or the interests of their insurer, they should have equipped the kitchen sinks with an overflow drain as such accidents were reasonably foreseeable.

The Tenant denied that he was uncooperative and argued that he did not refuse the Landlords access to the rental unit but rather demanded that they provide him with a Notice of Entry that complied with the Act. In particular, the Tenant said it was his position that the Landlords' Notice of Entry dated January 7, 2011 was invalid because it proposed a range of times for entry rather than a specific time. The Tenant noted that in his last e-mail of January 12, 2011 to the Landlords' agent, he advised her that,

"I will comply with "a proper Notice of Entry for valid reasons, but will not be singled out and harassed by the Landlord in this area which means I cannot be repeatedly given Notices of Entry for Routine Inspection without the other tenants also participating."

Analysis

Section 29 of the Act says as follows:

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

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

(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;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

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

Section 33(1) of the Act says as follows:

"In this section, **"emergency repairs"** means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property."

The Tenant argued that the overflowing sink in his rental unit on January 7, 2011 did not constitute an emergency and therefore the Landlords and their agents were not entitled to enter the rental unit that day without his consent. The Tenant claimed he was willing to grant the Landlords access upon their providing him with 24 hours' written Notice of Entry pursuant to s. 29 of the Act, however they failed to do so. The Landlords argued that they reasonably believed there was an emergency on January 7, 2011 due to the amount of water that had leaked from the rental unit. The Landlords also argued that the Tenant's refusal to grant them access was unreasonable, and not only interfered with the Landlords' duty to ensure the safety of other occupants but also to preserve the rental property. In particular, the Landlords claim that the water from the overflowing sink may have resulted in significant water damage to the interior walls of the rental property and their inability to assess the damage could potentially compromise their position with their insurer.

Section 33 of the Act defines an emergency repair ***for the purposes establishing when a Landlord has an obligation to make urgent repairs or in the alternative to provide a process whereby a Tenant may make them in lieu of a Landlord***. I find that this restricted definition cannot be applied in the same fashion to interpret the meaning of "*emergency*" under s. 29 of the Act which I find requires a broader interpretation. For example, smoke coming from a rental unit would be considered an emergency that would warrant entering a rental unit without notice however, that circumstance is not specified under s. 33 of the Act as an emergency repair. Furthermore, if the definition of emergency under s. 29 of the Act was intended be the same as an "emergency repair" under s. 33 of the Act, the Act would have indicated that that was the case, which it does not.

I agree with the Landlords that given the amount of water they found in the suite below the rental unit on January 7, 2011 and given that water was still dripping from the ceiling and light fixture down the walls, they reasonably believed there was an emergency and that entry to the rental unit was necessary to protect the safety of the occupants in the suite below as well as the rental property. I also agree with the Landlords that it would not have been reasonable for them to have had to accept the Tenant's opinion that there was no emergency because he had mopped up water and also because the Tenant had no expertise in that area and was unaware of the flooding he had caused in the unit below him. Although the Tenant argued that there was no evidence that the flooding was caused by him, given the closeness in time and proximity of the 2 suites, I find on a balance of probabilities that it was.

The Tenant also argued that the written notice of entry he received on January 7, 2011 from the Landlords was invalid because it did not specify a time but rather simply indicated a range of times. I find that there is no authority for this proposition. Section 29 of the Act does not require that a Tenant must be present during an inspection or require that specific time for an inspection be given (although it is encouraged whenever possible as a courtesy). The Tenant argued that unless he knew the specific

time the Landlords were going to enter, it was possible that the Landlord might come at an inopportune time and thereby breach his right to privacy. I find this unlikely given that the Tenant currently uses a lock on the interior of his door which prevents access to the unit unless he unlocks it.

For all of these reasons, I find that the Tenant has significantly interfered with and seriously jeopardized a lawful right of the Landlords. Consequently, I find that there are grounds to uphold the One Month Notice to End Tenancy for Cause dated January 12, 2011 and the Tenant's application to cancel it is dismissed without leave to reapply.

Conclusion

The Tenant's application to cancel a One Month Notice to End Tenancy for Cause dated January 12, 2011 is dismissed without leave to reapply. As the tenancy will be ending, the balance of the Tenant's application is also dismissed without leave to reapply. The Landlords did not request any orders at the hearing.

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: February 10, 2011.

Residential Tenancy Branch