

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47. Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant entered into written evidence a copy of the landlord's Notice posted on his door on February 26, 2011. The parties agreed that the tenant handed the landlord a copy of his dispute resolution hearing package on March 7, 2011. I am satisfied that these documents were served to one another in accordance with the *Act*.

At the hearing, the tenant's advocate and the tenant said that they had not received the landlord's written evidence package which included written condition inspection reports and photographs of the condition of the rental unit in October 2010. The landlord said that he sent this material to the tenant by Canada Post's ExpressPost service. The Residential Tenancy Branch received this material on March 15, 2011. Although this material would be considered served within 5 days of its mailing, the tenant's advocate objected to considering this evidence due to its late submission.

The landlord asked for an Order of Possession if the tenant's application to cancel the Notice were dismissed. This Order of Possession could not be obtained until April 30, 2011 due to the date of the deemed service of the Notice to the tenant.

Issues(s) to be Decided

Should the landlord's Notice to End Tenancy be cancelled? Should the landlord be issued an Order of Possession?

Background and Evidence

This tenancy commenced as a three-month fixed term tenancy on May 22, 2010. After the expiration of the three-month fixed term, this tenancy continued on a month-to-month basis. Monthly rent was set at \$440.00, payable on the first of each month. The landlord continues to hold the tenant's \$220.00 security deposit plus applicable interest. No interest is available over this period.

The landlord entered into written evidence copies of three "Cleanliness and hygiene letters" that were issued to the tenant on October 18, 2010, November 19, 2010 and December 10, 2010, after the completion of the landlord's monthly room check/safety inspection. Although a January 2011 inspection was not conducted because of staff illness, the landlord entered into written evidence a letter regarding the February 24,

2011 inspection. This letter indicated that the tenant's door was difficult to open on that date because two bikes and other "assorted garbage/clothing" were blocking the tenant's doorway. The landlord's letter claimed that "The floor could not be seen, covered with garbage, dirty clothing, bags. (cans/bottles???)"

I received two very different accounts of the condition of the tenant's rental unit from the landlord and the tenant. Both witnesses for the landlord maintained that there has been no appreciable improvement in the condition of the tenant's rental unit for the past five months. Both have visited the rental unit repeatedly and gave sworn testimony that they have been part of or witnessed discussions with the tenant advising him that his failure to keep his room in acceptable condition may lead to his eviction. The tenant gave sworn testimony that he has not been advised that the condition of his room may lead to the end of his tenancy and that all that he was told by the landlord's staff was that he could do better. The most recent inspection on March 17, 2011 highlighted these two different sets of testimony. The tenant said that other than a slight blockage to his door by a bike that he needs to use to assist him with his mobility issues, his room was clean enough "to eat off of" by the time of the March 17, 2011. Both landlord's representatives attended this inspection and disputed his testimony. They said that the rental unit was still in poor condition at the time of that inspection.

The landlord asserted that the tenant had been given frequent opportunities to comply with the written notices to keep his rental unit in acceptable condition. The landlord referred to Article 15 of the signed and initialled Addendum to the tenant's Residential Tenancy Agreement. This Article required the tenant to keep his rental unit "in reasonable order (clean and tidy) and may contain only personal effects." The landlord asked for an Order of Possession on the basis of the tenant's breach of this material term of his Residential Tenancy Agreement and the health and safety consequences of his failure to keep his rental unit in acceptable condition.

Analysis

The landlord's Notice issued pursuant to section 47 of the *Act* cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has not done required repairs of damage to the unit/site.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In considering the landlord's reasons for issuing the Notice, I find that the landlord has provided little recent evidence regarding the allegations that the tenant has jeopardized the health or safety of the landlord or other occupants or that he has placed the landlord's property at significant risk. I also note that the landlord's photographs of the tenant's rental unit were taken on October 18, 2010, over five months before this hearing and after four additional inspections have occurred. There was no evidence entered by the landlord about the allegation that the tenant has failed to conduct required repairs of damage to the rental unit.

Most of the landlord's evidence centered on the landlord's allegation that the tenant had breached a material term of his tenancy agreement, Article 15. When a landlord issues a Notice to End Tenancy for Cause and the tenant disputes the Notice, the onus is on the landlord to prove cause for issuing the Notice. Even if there has been a breach of a material term of a tenancy agreement, the landlord needs to demonstrate that this breach was not corrected within a reasonable time after **written** notice to do so was provided to the tenant.

Although I have serious concerns about the credibility of the tenant's sworn testimony regarding the condition of his rental unit, the landlord has produced little to call into question the tenant's assertion that he was unaware of the contents of the landlord's written evidence. The landlord's representative testified that almost all of this material, including the monthly condition inspection reports, had been provided to the tenant on previous occasions. However, the landlord was unable to confirm that any written report of the condition inspection reports was ever conveyed to the tenant directly or in a way that is authorized under the *Act*. The landlord's representative said that these reports were slipped under the tenants' door on each occasion. The landlord's representative observed that the tenant's claim that he never received these documents is a reflection of the condition of the tenant's rental unit when a document slipped under the tenant's door could not be located by the tenant.

Under these circumstances, I am not satisfied that the landlord has adequately addressed the concerns raised by the tenant and his representative that he was unaware of the reasons for the Notice to End Tenancy until after that Notice was provided to him. I accept the testimony of the landlord's representatives that there have been discussions regarding the condition of the tenant's rental unit during monthly inspections. However, as noted above, a tenant has to be given a reasonable opportunity to correct an alleged breach of a material term of a tenancy agreement after written notice to do so has been provided to the tenant. In this case, I find that the landlord has not produced adequate evidence to demonstrate that the written reports

were provided to the tenant in a way that ensured that he received these notices and as approved by the *Act*. Slipping notices under a tenant's door is not sufficient to provide written notice to correct an alleged breach of a material term of a tenancy agreement.

Despite my reservations about the credibility of the tenant's oral testimony, I find that the landlord has provided insufficient evidence to allow me to find that this tenancy should be ended on the basis of a breach of a material term of this tenancy agreement. I also find insufficient basis to end this tenancy on any of the other grounds cited by the landlord in the Notice.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy for Cause is set aside with the effect that this tenancy shall continue.

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*.