

Decision

Dispute Codes:

CNC

Introduction

This is an application by the tenant seeking to cancel a One-Month Notice to End Tenancy for Cause issued by the landlord based on an alleged breach of a material term in the tenancy agreement.

Issues to be Decided

Whether or not the One-Month Notice to End Tenancy for Cause should be cancelled.

Background and Evidence

The tenancy began in 2007 and the rent is \$225.00. The tenant submitted a copy of the One-Month Notice to End Tenancy for Cause dated February 22, 2011 effective on March 31, 2011. The tenant also submitted photos and written testimony from witnesses.

The landlord testified that the tenant had been repeatedly warned to remove various items that appeared on the property and although the tenant did comply, the problem is considered to be chronic. The landlord testified that there were decaying boxes left unattended, an artificial Christmas tree was abandoned outside and a sofa-bed was placed in the common area and remained there for several days until the landlord issued the notice. The landlord testified that the standard tenancy agreement of the organization contains a term prohibiting the storage of items outside the unit, and that this is a material term, given the nature of the rental complex.

The tenant did not agree that her actions constituted a violation of a material term. The tenant testified that the items in question were promptly removed and some of the alleged items did not even belong to her. The tenant stated that the tires placed in front of her porch railing were put there to ensure that the railing was stabilized as it was wobbly. The tenant stated that her porch area is not any more unsightly than many others in the complex. The tenant stated that she had her satellite dish installed on the

cabinet on her porch because she could not arrange to get access to the hydro shed and also because she feared that the dish would be vandalized.

Analysis

Section 47(1)(h) of the Residential Tenancy Act states that a Notice for Cause can be issued if the tenant: 1) fails to comply with a material term, and; 2) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

To establish a breach of a material term in the tenancy exists entails satisfying the Dispute Resolution Officer that three components exist:

1. There must be a clear term contained in the tenancy agreement
2. This term must fit the definition of being “material”
3. There must be a genuine breach of the material term.

A copy of the Tenancy agreement was not in evidence before me to confirm the term in question existed in the agreement. Presuming that this term was in the agreement, to establish the materiality of a term requires a focus upon the importance of the term in the overall scheme of the tenancy agreement. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term.

A material term is a term that the parties had both agreed was so important that the most trivial breach of that term would give the other party the right to end the agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the tenancy agreement in question.

In this instance, the landlord alleged that the requirement not to store personal items outside the unit was one of sufficient importance that the tenant’s breach would justify the end of the entire tenancy agreement. The tenant did not agree.

Based on the testimony of both parties, I find that whether or not the issue of storage would qualify as a breach of a material term, I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit.

A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In this instance, I find that any area beyond the porch is a common area and, under the Act, must be kept completely clear of all personal items, unless the landlord gives permission for a specific item to be placed in the common area. If the tenant's railing is a hazard, the landlord is obligated under section 32 to have it inspected and, if found necessary, secured to avoid injury. I find that the landlord has committed to look into this and any other matter raised by the tenant.

With respect to the tenant's porch, I find that the tenant is at liberty to have items that are there for the purpose of enjoying the use of this space, provided the items do not pose any problem with safety or constrict the entrance area. This does not include a right to use the area for storage purposes. With regard to the positioning of the satellite dish on a cabinet located on the verandah, I find that it is clear that this equipment was not professionally installed and as such may or may not be safe. I accept that landlord's testimony that there is an area provided for tenants to install individual satellite dishes.

Based on testimony of both parties, the preponderance of the evidence has led to the conclusion that there was no proof of a breach of a material term, and the violation of section 32 of the Act was corrected by the tenant within a reasonable amount of time.

In light of the fact that the tenant is now aware that she will be held accountable in future to strictly comply with section 32 of the Act and the terms of the tenancy agreement prohibiting storage outside the unit, I find that the One-Month Notice to End Tenancy must be cancelled and order that it is of no force nor effect. However, I must caution the tenant that should she repeat the alleged violation, this would likely serve as a valid basis for the landlord to end the tenancy. I also encourage the parties to communicate in written form for the purpose of keeping a record of the communications and to avoid conflict or misunderstandings.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of February 22, 2011 be cancelled and of no force nor effect.

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: March 2011.

Residential Tenancy Branch