



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNC, DRI, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; to dispute a rent increase; and to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

The Tenant submitted documents to the Residential Tenancy Branch on April 01, 2011, copies of which were served to the Landlord. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings. The Tenant submitted additional documents to the Residential Tenancy Branch on April 20, 2011, copies of which were NOT served to the Landlord. As the second package of documents were not served on the Tenant they were not accepted as evidence for these proceedings.

The Landlord submitted an email dated March 31, 2011 to the Residential Tenancy Branch on April 18, 2011, a copy of which was served to the Tenant. The Tenant acknowledged receipt of this document and it was accepted as evidence for these proceedings. This is the only document that was served to the Tenant by the Landlord as evidence and is the only evidence from the Landlord that is being accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided in this decision are whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside, whether the Landlord has the right to increase the rent for this rental unit, and whether the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2010; that the tenancy agreement requires the Tenant to pay \$500.00 rent on the first day of each month; that utilities are included in the rent; and that the Tenant has a private bedroom in this residential complex but he shares common living areas with other occupants, one of whom is the Landlord's son.

The Landlord and the Tenant agree that the Landlord gave the Tenant a letter dated March 26, 2011, in which the female Landlord informed the Tenant that he will be responsible for paying 1/3 of the hydro and gas costs, effective April 01, 2010. The letter informs the Tenant that if he does not agree to pay the additional payment he will be evicted, effective May 01, 2011.

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was personally served on the Tenant on April 01, 2011, which had a declared effective date of April 30, 2011. The reasons stated for the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; and that the Tenant has caused extraordinary damage to the unit or property.

The Landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- On at least two occasions, approximately three months ago, the Tenant has left the element on the stove top burner on "high" and left the house
- The Tenant frequently leaves the door to the rental unit unlocked and on one occasion he left the house without even closing the front door, which is a contravention of the "house rules" that are outlined in the tenancy agreement
- The Tenant frequently fails to clean the kitchen after he uses it, which is a contravention of the "house rules" that are outlined in the tenancy agreement
- That the Tenant's vehicle leaked oil onto the driveway and that when he cleaned the spill he dumped oil down a sink in the garage which drains onto the grass, and that the grass is now covered with oil
- That the Tenant frequently turns on the gas fireplace in the dining room and leaves the room
- That the Tenant frequently uses the air conditioning without permission
- That the Tenant has left the gas tank for the barbecue open after he has finished barbecuing

The Tenant presented the following evidence and arguments in support of the application to cancel the Notice to End Tenancy for Cause:

- He did accidentally leave the stove element on after he finished cooking on two occasions, although those incidents occurred many months ago, at which point he had returned to his room
- That he does not recall leaving the front door wide open upon leaving the house, although he does recall the Landlord advising him of the incident.
- That the front door does not always close properly and this malfunction may have resulted in the door not closing properly
- That he does make reasonable efforts to clean the kitchen after using it and that the Landlord's standards are unreasonable
- That his vehicle did leak oil onto the driveway, that he cleaned it using biodegradable dish soap and a pressure washer, that he did not dump oil down the sink in the garage, although he used it to clean up afterwards, and that the entire spill has been cleaned appropriately
- That he does use the gas fireplace in the dining room to warm the residential complex in the winter
- That he does use the air conditioning to cool the residential complex in the winter

The Witness for the Landlord #1, who lives in the residential complex, presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- On at least two occasions, with the most recent being approximately one month ago, the Tenant has left the element on the stove top burner on "high"
- That the Tenant does not contribute to cleaning the common areas of the rental unit in any way and that he frequently leaves crumbs, food splatter, and other messes in the kitchen, shoes in the entryway, and garbage such as receipts in the entryway
- That the driveway is now stained where the Tenant attempted to clean the spill with bleach, that the grass where the garage sink drains is stained black, and the sink is stained by oil

The Witness for the Landlord #2 stated that he lived with the Tenant in the residential complex until the end of January of 2011; that he had no significant concerns with the Tenant; that he did not find him to be particularly untidy; and that he may have expressed concerns about the Tenant's cleaning habits to the Landlord's son but they were nothing serious.

The Landlord attempted to call a third witness, who was not available at the phone number provided.

The Landlord and the Tenant agree that on March 31, 2011 they had a telephone conversation in which the Landlord offered to reduce the rent by \$25.00 per month if the Tenant would be willing to pay 1/3 of the gas and hydro charges. The Tenant argues that this conversation and the letter, dated March 26, 2011, in which the Landlord advised the Tenant he would be evicted if he refused to pay 1/3 of the gas and hydro charges, demonstrate that the Landlord does not truly wish to end this tenancy because of concerns about safety, cleanliness, or damage to the rental unit.

Analysis

Section 14(2) of the *Act* stipulates that a term of a tenancy agreement, other than a standard term, may only be amended if the landlord and the tenant agree to the amendment. As utilities were included in the rent when this tenancy began, charging this Tenant for any portion of the gas or hydro costs constitutes a change in the terms of the tenancy agreement. As the Tenant has not agreed with the Landlord's proposal that the Tenant pay 1/3 of the gas and hydro costs, I find that the Landlord does not have authority to alter this term of the tenancy agreement. In reaching this conclusion I specifically note that the Landlord does not have the right to terminate or restrict this service pursuant to section 27 of the *Act*.

Section 42 of the *Act* stipulates, in part, that a landlord must not impose a rent increase for at least 12 months after the tenancy began. As this tenancy only began on August 01, 2010, I find that the Landlord does not have the right to increase the base rent of \$500.00 until August 01, 2011. I therefore find that rent remains at \$500.00 per month and that it will remain at that rate until the Landlord increases the base rent in accordance with the *Act*.

I find that the Landlord has provided insufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; and that the Tenant has caused extraordinary damage to the unit or property. In reaching this conclusion I considered the following factors:

- While the Landlord and the Tenant clearly have different cleaning standards, the Landlord has submitted insufficient evidence to corroborate the Landlord's claim that the Tenant is not maintaining the common areas in a reasonable state of cleanliness.
- In determining that the Landlord has submitted insufficient evidence to show that the Tenant is not maintaining the common areas in a reasonable state of cleanliness, I was heavily influenced by the absence of photographs or other such evidence that would allow me to make an independent assessment of the condition of the common areas

- In determining that the Landlord has submitted insufficient evidence to show that the Tenant is not maintaining the common areas in a reasonable state of cleanliness, I was further influenced by the testimony of Witness for the Landlord #2, who testified that he did not find the Tenant to be particularly untidy
- While there is no dispute that the Tenant's vehicle leaked oil on the residential property, I find that the Landlord has submitted insufficient evidence to establish that the Tenant did not make reasonable efforts to clean the spill or that the spill has resulted in extraordinary damage to the residential property
- In determining that the Landlord has submitted insufficient evidence to show that the Tenant did not make reasonable efforts to clean the spill, I was heavily influenced by the absence of photographs or other such evidence that would allow me to make an independent assessment of the impact on the affected area
- While there is no dispute that the Tenant uses the heating and cooling systems in the house, I find that those systems are available to him as part of his tenancy and he is entitled to use them. In the absence of evidence that establishes he is using them maliciously, such as using the heat while opening all the windows in the home, I find that this does not jeopardize the lawful interest of the Landlord
- While there is no dispute that the Tenant has compromised the safety of the residential property on occasion, by leaving the door insecure, by leaving the stove burner burning on at least two occasions, and by leaving the barbecue propane tank on after turning off the barbecue, I find that these incidents have not seriously jeopardized the health or safety or lawful interest of another occupant or the landlord, or that the Tenant has put the Landlord's property at significant risk
- While these issues are of concern and the Tenant is hereby advised that he must be careful in the future regarding these issues, they are mistakes that are commonly made in a residential setting and are not, in my view, cause to end this tenancy at this point
- In determining that these safety issues are not cause to end this tenancy at this point, I was heavily influenced by the fact that on March 31, 2011 the Landlord was willing to continue to continue the tenancy if the Tenant would agree to pay a portion of utility charges. This causes me to believe that even the Landlord does not believe that the Tenant represents a significant risk to the property.

After considering this dispute in its entirety, I am convinced that the Landlord would not be attempting to end this tenancy if the Tenant had agreed to pay a portion of the hydro and gas charges. In reaching this conclusion I was heavily influenced by the letter, dated March 26, 2011, in which the female Landlord informed the Tenant he would be evicted if he did not agree to the additional charges. In reaching this conclusion I was further influenced by the conversation that the Landlord and Tenant had on March 31, 2011, 2011, in which the male Landlord informed the Tenant he would be willing to continue the tenancy if the Tenant agree to the additional charges. As refusing the amend a term of a tenancy agreement is not grounds for ending a tenancy, pursuant to section 47 of the *Act*, I find that the Landlord has not established grounds to end this tenancy.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that the Landlord has grounds to end this tenancy pursuant to section 47 of the *Act*, I hereby set aside the One Month Notice to End Tenancy that was served to the Tenant on April 01, 2011, and I order that this tenancy continue until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I hereby authorize the Tenant to deduct \$50.00 from his next rent payment, as compensation for the filing fee he paid for this Application for Dispute Resolution.

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: April 28, 2011.

Residential Tenancy Branch