Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution to cancel a 1 Month Notice to End Tenancy for Cause, for an order requiring the Landlord to comply with the Residential Tenancy Act (the "Act"), for a monetary order for money owed or compensation for damage or loss and to recover the filing fee.

Both parties and the Landlord's witness and spouse, appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling the 1 Month Notice to End Tenancy for Cause, for an order requiring the Landlord to comply with the Act, for a monetary order and to recover the filing fee?

Background and Evidence

This month to month tenancy started on March 15, 2008, monthly rent is $1,700.00 and the Tenant paid a security deposit of $850.00 on February 6, 2008.

The rental unit is a two bedroom house with an attic, ¾ of the basement, and two parking spaces. The Landlord retains use of the remaining ¼ basement and the garage. The Landlord's house is adjoining the rental unit and is easily visible each to the other.

In addition to the request to cancel the Notice, the Tenant has also applied for a monetary order in the amount of $500.00 and for an order to the Landlord requiring him to provide the Tenant with his right to quiet enjoyment.

Pursuant to the Residential Tenancy Branch rules of procedure, the Landlord proceeded first in the hearing and testified as to why the Tenant had been served a 1 Month Notice to End Tenancy.

The Landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the Tenant on June 7, 2011, with a stated effective vacancy date of July 31, 2011. The cause listed on the Notice stated that 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 witness for the Landlord testified by reading a prepared statement indicating that the Tenant was issued the Notice due to the Tenant conducting his business out of the rental unit, in violation of clause 5 of the addendum to the tenancy agreement, which the Landlord supplied into evidence. In support of this allegation, the Agent stated that the Tenant is using the rental address as his business address and supplied a BBB, internet and Google listing which show the rental unit address for the Tenant's business.

The Agent further stated that the Tenant or his son is allowing the Tenant's son's pit bull to enter the premises and to defecate on the lawn, which the Landlord claims he has to pick up. The Agent submitted that this was also in violation of the tenancy agreement, clause 14 of the addendum.

The Agent submitted that the Tenant had installed a gas barbeque grill and has not proven to the Landlord that a certified gas installer hooked up the grill, as per the Landlord's request.

The Agent submitted that the Landlord's home owner's insurance has been cancelled due to the Tenant running his business out of the rental unit. I note that upon query, the Landlord had no evidence of this statement other than an email from his insurance agency.

The Agent submitted that the Tenant brought a boat onto the premises from May 26, until May 30, 2011, which leaked gas or caused gas to be leaked onto the grass, killing the grass. The Agent submitted that this was wilful damage to the property and violated the tenancy agreement.

The Landlord also submitted a copy of a cautionary letter written to the Tenant, regarding the allegations noted above, and a written caution about providing an insurance policy to the Landlord's insurance agency. I note that this written caution was dated June 21, 2011, subsequent to the issuance of the Notice.

Upon query, the Landlord acknowledged he knew the Tenant had a contracting business and that he would have an office in the house and had equipment stored there. The Landlord further acknowledged that he had not sought out the internet, BBB or Google listing until 5-6 weeks ago.

In response, the Tenant stated that from the first day of the tenancy, the Landlord knew he owned a construction business and that his office and stored equipment was in the rental unit. The Tenant submitted that Landlord and Agent helped him move equipment in and as the Landlord visits frequently, has always known about his business and office arrangements. The Tenant further submitted that he just receives mail and does billing and invoicing from home.

The Tenant submitted that he does not run his business or advertise his business from the home address, but that his home address is listed with the BBB and the business licensing office.

The Tenant stated that his son's pit bull does visit, but does not stay there. The Tenant stated that his son works for the SPCA and "re-establishes" dogs so that they are suitable for adoption; thus the son takes the dog everywhere with him. The Tenant was adamant that his son would never allow a dog to defecate on the grass without picking it up, due to his line of work.

The Tenant submitted that he did bring a boat over to the premises to pack it and load it up, but was unaware that it was damaged prior to bringing it over as it is a used boat. He further stated that it was an accident and not wilful. The Tenant submitted that he has put new grass seed over the dead grass and it is now growing back.

The parties each stated that the Landlord has issued another 1 Month Notice to the Tenant, but this Notice was not submitted or considered.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have given careful consideration of all oral and written evidence before me; however, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Where a Notice to End Tenancy is disputed, the Landlord had the burden to prove that the tenancy should end for the reasons indicated on the Notice, which is that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I **grant** the Tenant's application and set aside the 1 Month Notice to End Tenancy for Cause dated June 7, 2011.

I find that the Landlord has not presented sufficient evidence to demonstrate that the Tenant breached a material term of the tenancy agreement. In reaching this conclusion, I am guided by Residential Tenancy Policy Guideline 8, which states, in part:

> *"A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Simply because the parties have put in the agreement that one or more terms are material is not decisive. The arbitrator will look at the true intention of the parties in determining whether or not the clause is material*."

I was persuaded by the testimony of the parties, both the Landlord and the Tenant, which confirmed that the Landlord knew of the Tenant's home office and stored equipment in the rental unit from the very beginning of the tenancy. Had the term been material, I find the Landlord would not have allowed the Tenant to move in or help him move his equipment into the basement. Therefore I find the Tenant has not breached any material terms and that further, the Landlord is estopped from raising this issue now, over three years into the tenancy.

I also find that the son bringing his pet over to the rental unit for a visit not a breach of the tenancy agreement and I do not find that the Tenant committed wilful damage to the rental unit or premises.

I further find the issues concerning the gas grill and the insurance to be of no merit as it relates to ending this tenacy based upon a breach of a material term.

Based on these findings, I find that the 1 Month Notice to End Tenancy for Cause dated June 7, 2011, issued by the Landlord in this matter is not valid and I order it to be cancelled. The Notice is of no force or effect and the tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

As to the Tenant's request for a monetary order or for an order requiring the Landlord to comply with the Act, while I find the Landlord is attempting to deprive the Tenant the

right of being self-employed or restrict his rights to have visitors, I do not find that the Tenant has sufficiently proven that the Landlord has deprived him of his right to quiet enjoyment. I therefore dismiss his claim for an order for the Landlord's compliance and for a monetary order.

As I have cancelled the Notice, I award the Tenant the filing fee of $50.00, which he is allowed to deduct from the next or a future month's rent payment in satisfaction of this amount. In the event the Tenant is not able to deduct this amount due to his pre-paid rent cheques, I have awarded the Tenant a monetary order in the amount of $50.00, which will be enclosed with the Tenant's Decision.

The parties are cautioned that this Decision addresses only the Notice issued on June 7, 2011, and that the standard timelines remain applicable to any other Notice which may have been issued by the Landlord.

Conclusion

The Landlord's 1 Month Notice to End Tenancy for Cause issued June 7, 2011, is cancelled and of no force or effect.

The Tenant's claim for a monetary order for $500.00 and an order for the Landlord's compliance is dismissed.

The Tenant is granted a monetary order for $50.00.

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: June 30, 2011.

Residential Tenancy Branch