



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and orders compelling the landlords to comply with the Act and setting conditions on the landlords' right to enter the rental unit.

The tenant and the landlord all appeared at the hearing and the tenant was represented by T.R. who represented himself as a lawyer but clarified that the tenant had not formally retained his firm to represent her.

Issue to be Decided

Should the notice to end tenancy be set aside?

Should the landlords be ordered to comply with the Act?

Should the conditions be imposed on the landlords with respect to their right to enter the rental unit?

Background and Evidence

The parties agreed that this tenancy began on January 1, 2011. The tenancy agreement consisted of a letter which both parties signed. The letter provided in part that "The full rental period will be for from [sic] January 1, 2011 not before noon, to August 31, 2011 noon".

The landlords took the position that the tenancy was for a fixed term ending on August 31, 2011. In July, the parties began exchanging emails in which the tenant asked to stay beyond August 31 and the landlords insisted that the tenancy would end on August 31. The tenant advised the landlords that she believed that she had a month to month tenancy.

The tenant testified that when the landlords insisted that the tenancy would end on August 31, she asked her cousin, T.R., to speak with the landlord on her behalf. T.R. testified that he telephoned the landlords who indicated that they believed the tenant

was using the address of the rental unit for immigration purposes and suggested that she was misrepresenting herself to immigration authorities. They then threatened to report the tenant to immigration authorities. T.R. advised the landlords that such a report would be a criminal act and that it amounted to extortion. The landlords thereafter refused to speak with T.R.

On July 15 the landlords attended at the rental unit pursuant to a written notice of entry. They stated that they intended to address plumbing problems. The tenant insisted that she had not complained of plumbing issues apart from a slow drain in the bathroom. At that meeting, the female landlord asked the tenant to sign documents advising the tenant that her tenancy would be terminated on August 31, 2011. The tenant refused to sign those documents. The tenant testified that as one of her witnesses was reading the documents, the female landlord pushed the tenant away from the witness.

T.R. characterized the female landlord's actions as a criminal assault. The tenant testified that she telephoned the police on July 15, but no charges were laid and she was advised by the police to address her issues with the landlord through the Residential Tenancy Branch.

The landlords denied having pushed the tenant and testified that she had an extreme emotional reaction to having been served with documents on July 15. The tenant testified that she suffers from a medical condition which is aggravated by stress, which is why she had arranged for witnesses to be present when her landlords attended at the rental unit and why she had arranged for T.R. to deal with the landlords on her behalf.

T.R. attempted to communicate with the landlords via email, but received no response from the landlords. The landlords testified that they set their email rules to direct email from T.R. to their "spam" folder as they were only willing to communicate with the tenant.

The parties agreed that on July 22 the landlords served the tenant with a one month notice to end tenancy for cause (the "Notice") which alleged that the tenant had breached a material term of the tenancy agreement. The landlords confirmed at the hearing that the material term in question was the end of tenancy date as expressed on the tenancy agreement.

The tenant seeks to set aside the Notice and further seeks orders directing the landlords in how they interact with the tenant. Specifically, the tenant seeks an order forbidding the landlords from resorting to what she perceives as harassment, compelling

the landlords to communicate with T.R. rather than directly with the tenant and prohibiting the landlords from attending at the rental unit unless T.R. is in attendance.

Analysis

Section 13(2)(B) of the Act provides that where a tenancy agreement establishes a fixed term tenancy, the agreement must also specify whether the tenant must vacate the rental unit at the end of the fixed term. In this case, no such provision was included in the tenancy agreement. Section 44(3) of the Act provides that where the tenant is not required to vacate on the last day of the fixed term, the parties are deemed to have renewed the tenancy agreement on a month to month basis.

I find that the tenancy becomes a month to month tenancy on August 31 and that the tenant cannot be compelled to vacate the rental unit on August 31. I find that because the tenant is not required to vacate the unit at the end of the fixed term, she has not violated a material term of the tenancy agreement and accordingly I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

It would appear that most of the conflict arising between the parties occurred as a result of the landlords' misunderstanding of the end of the tenancy. I do not accept that the landlords' repeated correspondence to the tenant advising her of their position with respect to the end of the tenancy amounts to harassment. The tenant was free at all times to apply to the Residential Tenancy Branch for a determination as to the status of her tenancy and when served with the Notice, was able to make her application to dispute the Notice. I do not accept that the landlords' statement in the July 14, 2011 letter that "It is not my responsibility to aid you in your request for immigration to Canada" amounts to extortion, nor is their suggestion that they might report the tenant to the authorities.

I do not accept that the landlords' attendance at the rental unit was made under the false pretence of addressing plumbing issues. The landlord had subsequently attempted to return to finish plumbing issues and I find it entirely possible that there may be plumbing issues of which the tenant is unaware.

I accept that the female landlords' actions on July 15 were unnecessarily aggressive. Although she denied having pushed the tenant, I note that the male landlord did not dispute that he had to restrain his wife on that date. I also had the opportunity to observe her demeanour during the hearing and noted that she repeatedly interrupted others including her husband when they were trying to speak and that she used dramatic body language in frustration. The male landlord tried unsuccessfully to

restrain her during the hearing and I accept that her behaviour is sufficiently unpredictable so as to create an excessively stressful situation should she have to deal with the tenant in a conflict.

I accept that due to her medical condition, the tenant is unusually susceptible to stress and I find that that the landlords have an obligation to communicate with her in a manner that will not create unnecessary stress. While it may not be possible to avoid disagreement between the parties, it is important that they make an effort to engage each other in a calm and courteous manner.

The tenant acknowledged that she did not have difficulty dealing with the male landlord and I see no reason to place any restrictions on his ability to enter the rental unit. However, I find that the female landlord should not have contact with the tenant until such time as a condition inspection of the rental unit must take place at the end of the tenancy. I order that the female landlord not have in person or telephone communication with the tenant until the end of the tenancy, at which time she may participate in an inspection provided that the male landlord is also present. The tenant is welcome to have an agent of her choosing, including T.R., present at that time. The female landlord may communicate via email as I can see no evidence that her emails to the tenant have been inappropriate or abusive.

I direct the parties and their agents to communicate with each other in writing except in the event of an emergency where written communication is not possible. The landlords may serve written communications on the tenant through the personal service by the male landlord or via email to either the tenant or to T.R. I see no evidence that receipt of email has been overly taxing on the tenant and I see no reason why the landlords' ability to email her directly should be interfered with. The tenant is free to pass on those communications to T.R. should she wish to do so.

The tenant had asked that I order that the landlords not attend at the rental unit unless T.R. is present. During the hearing, T.R. repeatedly interrupted others, including me, was verbally combative, generally disrespectful of the hearing process and had to be repeatedly reminded that it was not his role to direct the process. I believe it is possible for T.R. to be an effective agent for the tenant and as she wishes him to act in that capacity, it is inappropriate for me to interfere with that appointment. However, it is understandable why the landlords do not wish to deal with T.R. and as his availability to attend at the rental unit is somewhat limited due to his work schedule, I find that it would be overly restrictive to limit the landlords' right of access to times when T.R. is available. The landlords are free to exercise their statutory right to access the rental unit provided

they serve the tenant with adequate notice and provided that the female landlord does not attend except as outlined above.

I remind the tenant that under the Act, the landlords are required to provide 24 hours written notice of entry and that apart from scheduling a condition inspection of the unit at the end of the tenancy, they are not required to find a time that is mutually agreeable to both parties. The fact that in the past the landlords have adapted their schedules to suit the tenant is a testament to their desire to work cooperatively with the tenant and I would encourage the landlords to maintain that cooperative spirit.

I note that the landlords indicated that they refuse to deal with T.R. in the future. I can appreciate that if T.R.'s behaviour on the telephone with the landlords was similar to his behaviour in the hearing, he might have been difficult to communicate with in the past. However, the tenant is entitled to appoint an agent to represent her. I have already directed that the parties and their agent restrict themselves to written communications during the tenancy and I note that T.R.'s email correspondence has for the most part been appropriate and I see no reason why he cannot continue to communicate with the landlords via email. The tenant has already appointed T.R. as her agent and appropriately advised the landlord that he would be acting in that capacity. The landlords therefore ignore his communications at their own peril as they are effectively ignoring the tenant's communications by refusing to read T.R.'s emails. The tenant may also choose another agent should she wish to do so, but must advise the landlords in writing of that agent's name and contact information prior to that agent contacting the landlords.

As the tenant has been substantially successful in her application, I find that she is entitled to recover the \$50.00 filing fee paid to bring the application. The tenant may deduct this sum from future rent owed to the landlord.

Conclusion

The Notice is set aside and future interactions between the landlords and the tenant are governed by the orders as outlined above. The tenant may deduct \$50.00 from a future rental payment.

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: August 26, 2011

Residential Tenancy Branch