



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDC, LAT, O

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2012, to cancel a One Month Notice to End Tenancy for Cause dated August 20, 2012, for compensation for damage or loss under the Act or tenancy agreement and for an Order permitting the Tenant to change the locks on the rental unit.

RTB Rule of Procedure 2.3 states that “if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” I find that the Tenant’s applications for compensation and for an Order permitting her to change the locks are not sufficiently related to her applications to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a One Month Notice to End Tenancy for Cause and they are dismissed with leave to reapply [with the exception of exterminator expenses which claim was dismissed without leave to reapply in previous proceedings].

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on July 1, 2012 and expires on July 1, 2013. Rent is \$1,100.00 per month, \$1000.00 of which is payable in advance on the 1st day of each month and \$100.00 of which is payable on the 20th day of each month. The Tenant paid a security deposit of \$550.00 at the beginning of the tenancy.

The Parties agree that the 10 Day Notice served on the Tenant on August 3, 2012 was cancelled as a result of the overdue rent having been paid within the 5 days granted on the Notice. The Landlord said the Tenant was served with a One Month Notice to End Tenancy for Cause on August 20, 2012 the sole ground of which was that there was a “breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

The Landlord said on July 27, 2012 she gave the Tenant a breach letter which set out the alleged following breaches of the tenancy:

- Failure to pay for utilities in the Landlord's name;
- Smoking in the rental unit;
- Rude and harassing behaviour to the Landlord;
- Moving in earlier than permitted;
- Failing to participate in a move in inspection; and
- Allowing a large, aggressive dog on the rental property.

The Landlord admitted that some of the conduct referred to in the breach letter was not, in fact related to a term in the Parties' tenancy agreement (eg. rude and harassing behaviour to the Landlord). The Landlord also admitted that in other instances, it was not possible for the tenant to correct the alleged breach (ie. moving in early). The Landlord further admitted that there was no evidence that the Tenant had failed to rectify certain breaches because they had not recurred (eg. having a large, aggressive dog on the property). The Landlord claimed however, that a maintenance person who attended the rental property on July 19, 2012 to make plumbing repairs witnessed the Tenant smoking inside and she provided a signed witness statement to that effect. The Tenant denied that she smoked in the rental unit.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that the Landlord cannot seek to end the tenancy by characterizing the Tenant's failure to pay utilities or rent for the period, June 28 – June 30, 2012, as a breach of a material term of the tenancy agreement. The Act specifically provides a procedure for dealing with such matters which involves first serving the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I also find that the Landlord cannot seek to end the tenancy on the grounds that the Tenant failed to participate in a move in condition inspection report. The Act provides a specific procedure for dealing with this matter which requires the Landlord to first give the Tenant a "Notice of Final Opportunity to Schedule a Condition Inspection" which the Landlord admitted she had not done. Consequently, I find that the Landlord cannot end the tenancy on the basis that these matters are alleged breaches of material terms of the tenancy agreement.

I further find that the Landlord cannot succeed on the ground that the Tenant moved in three days early because there is no term in the tenancy agreement prohibiting her from doing so and there is no way in which this can be corrected (or undone) at this point in

the tenancy in any event. Similarly, I find that the Landlord cannot succeed on the ground that the Tenant allowed a guest to bring a “large and aggressive dog” onto the rental property because she admitted that there has not been a repeat of the incident and therefore I find that there is no evidence that the Tenant failed to correct this situation. Furthermore, I find that there is no term in the tenancy agreement prohibiting pets on the rental property.

I also find that there is no evidence that the Tenant breached a material term of the tenancy agreement by allegedly engaging in rude and harassing behaviour with the Landlord. In other words, the Landlord could not point to a term of the tenancy agreement which required the Tenant to behave in a different manner with the Landlord. The One Month Notice has another ground that deals with such matters which is that the “tenant has significantly interfered with or unreasonably disturbed the Landlord.” In this matter, I find that the Landlord has in error characterized all of the Tenant’s conduct under one category on the One Month Notice when it properly should have fallen under other categories (or been the subject of another kind of Notice to End Tenancy).

I find that the term of the tenancy agreement that prohibits smoking in the rental unit likely is a material term of the tenancy agreement. However, in this case, it is the word of the Landlord’s handyman against the word of the Tenant. Given this contradiction in the Parties’ evidence and in the absence of any additional, corroborating evidence from the Landlord (who has the burden of proof) to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenant breached this term by smoking in the rental unit. Consequently, I find that there is insufficient evidence of the ground alleged on the One Month Notice to End Tenancy for Cause dated August 20, 2012 and it is cancelled.

Conclusion

The Tenant’s application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2012 and a One Month Notice to End Tenancy for Cause dated August 20, 2012 is granted. The Tenant’s applications for compensation [with the exception of exterminator expenses] and for an Order permitting her to change the locks are dismissed with leave to reapply. 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: September 05, 2012.

Residential Tenancy Branch