



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, CNC, OPC, OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated July 13, 2013 with no effective date shown claiming that \$284.00 in utilities were owed. The tenant is also disputing a One-Month Notice dated June 29, 2013.

The hearing was also convened to hear the landlord's application seeking an Order of Possession and Monetary Order based on the Ten Day Notice to End Tenancy for Unpaid Rent. The landlord's application also includes a request for an Order of Possession based on the One-Month Notice to End Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Should the Ten-Day Notice to End Tenancy for Unpaid Rent be cancelled, as requested by the tenant or enforced with an Order of Possession as requested by the landlord?
- Should the One Month Notice to End Tenancy for Cause be cancelled, as requested by the tenant, or enforced with an Order of Possession, as requested by the landlord?

- Is the landlord entitled to a monetary order for utilities owed?

Background and Evidence

Submitted into evidence were copies of communications, a copy of the tenancy agreement, a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 13, 2013, demanding outstanding utility arrears of \$284.00, a copy of the One Month Notice to End Tenancy for Cause dated June 29, 2013, photographs and written testimony. A copy of the tenancy agreement was also in evidence.

The landlord testified that the tenancy began on April 1, 2012 and rent is \$650.00. No security deposit was paid.

The landlord testified that under the terms of the tenancy agreement the tenant is required to pay for 25% of the municipal water charges but did not pay their portion of the bill. The landlord testified that a 10-Day Notice to End Tenancy for Unpaid Rent was issued to the tenant, and the landlord is seeking an Order of Possession and Monetary Order for the outstanding utility arrears.

The tenant testified that the landlord's water bill was paid in full by the tenant giving the payment of the funds to the landlord's handyman, in compensation for work done in the complex. The tenant testified that she was following the directions given by the landlord.

The landlord argued that the tenant was never granted permission to pay the funds to her handyman and was required to pay the landlord directly for the utility invoice.

With respect to the One Month Notice to End Tenancy for Cause, the landlord stated that they were seeking an Order of Possession. A copy of the Notice is in evidence indicating that:

- The tenant or a person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property and jeopardized a lawful right or interest of another occupant or the landlord;
- The tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlord testified that the tenant had wrongfully directed the landlord's handyman to cut down greenery without the landlord's permission. The landlord provided evidence that the handyman engaged in public drunkenness, disturbed other residents with outbursts, built a fence against the landlord's direction, used foul language, threatened other residents, rearranged driftwood on the beachfront, set up a residence and used the landlord's property for his own use. The landlord also accused the handyman of stealing articles assisted by the tenant.

The landlord testified that the handyman has been cohabiting with the tenant. The landlord stated that she holds the tenant responsible for instructing the handyman to do things that should not be done and for encouraging his offensive behavior. According to the landlord, the tenant has allowed the use of her car to assist the handyman in removing stolen property from the landlord's storage area. The landlord had submitted numerous letters into evidence containing written testimony from third parties about their experiences in dealing with the handyman and describing incidents that they had observed. The landlord also submitted photos showing unfinished work that she had assigned to the handyman and photos of the areas that this person had set up for his own use.

The tenant denied that the landlord's handyman was ever her co-tenant. The tenant stated that he did not reside with her at all. The tenant argued that she had not given instructions to the handyman. The tenant pointed out that this individual is actually employed by the landlord and is on the premises to do work that the landlord has assigned to the handyman.

The tenant made reference to copies of communications from the landlord to the handyman that were in evidence, clearly confirming that this individual is employed to do work on behalf of the landlord and was invited onto the property by the landlord to finish various tasks that the landlord and handyman had arranged between themselves. The tenant testified that she takes no responsibility for the conduct of the landlord's employee. The tenant disputed the landlord's position that the handyman's behavior is a reflection on her tenancy.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulation or the tenancy agreement. However, the Act provides that any utilities that are required to be paid directly to the landlord as a specific term of the tenancy agreement, must be paid within 30 days after a written demand from the landlord is received, or they become

rental arrears for the purpose of issuing a Ten Day Notice to End Tenancy for Unpaid Rent .

I find it apparent that the parties had entered into a tenancy agreement that involved an arrangement in which the tenant would do some repairs or renovations, and for which the tenant was to be given compensation. I find that the move in condition inspection report states that the tenant accepted the rental unit "as is". I accept the tenant's argument that the landlord had promised credit towards the rent or utilities in exchange for the tenant's work in restoring the rental unit.

However, I find that I am unable to enforce ancillary contracts such as this, that are not strictly tenancy matters and that grant a tenant credit for work performed.

Accordingly, I find that, I must rely strictly on what is contained in the written tenancy agreement between the parties. In this regard, I find that I am not able to determine the specific terms that were agreed upon, except what is actually described within the agreement. I find that this tenancy agreement indicated in section 3 that water was included in the rent. However the agreement also features a hand-written notation below this at the bottom of the page indicating,

"1/4 water bill is tenants responsibilities"

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if:

- a) the term is not consistent with the Act or Regulations,
- b) the term is unconscionable, or
- c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Given that the tenancy agreement contains conflicting information with respect to the tenant's obligation to pay water utilities, I find that I am not prepared to enforce the conflicting terms in the agreement relating to water utility payments as it is not sufficiently clear.

Accordingly I find that the \$650.00 rent being paid by the tenant each month does include water utilities under the tenancy agreement.

With respect to the tenant's apparent practice of deducting various costs for repairs and renovations, from rent owed, I find that this practice is contrary to the Act and must cease. I find that the rent must be paid in full every month, in accordance with section 26 of the Act.

I find that any other contracts between these parties that entail performance of labour tasks for credit or remuneration are separate from the tenancy agreement and will not affect the amount of rent to be paid by the tenant.

Given the evidence before me, I find that the Ten Day Notice to End Tenancy for Unpaid Rent has no merit and must be cancelled.

In regard to the landlord's One-Month Notice to End Tenancy for Cause, I find that the landlord's evidence related primarily to the conduct and actions of a third party who was evidently associated with the landlord as a handyman and who was not a co-tenant nor person permitted on the premises by the tenant.

I find that the landlord has not sufficiently proven that the tenant nor a person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

I find that the landlord has also failed to prove that the tenant or person permitted on the property by the tenant, engaged in illegal activity that caused damage to the landlord's property or jeopardized a lawful right or interest of another occupant or the landlord.

Finally I find that the landlord has not offered adequate evidence to establish that the tenant has failed to comply with a material term, without correcting the situation within a reasonable time after the landlord gives written notice to do so.

Given the above, I find that the One-Month Notice to End Tenancy for Cause has no merit and must be cancelled.

I hereby order that the 10-Day Notice to End Tenancy for Unpaid Rent dated July 13, 2013, is cancelled and of no force or effect. I hereby order that the One Month Notice to End Tenancy for Cause is also cancelled and of no force nor effect.

In addition to the above, I order that the tenant's rent of \$650.00 includes paid-for water utilities. I further find that the tenant is required to pay the rent of \$650.00 in full each month by the due date, in compliance with section 26 of the Act, without any monetary deductions for work or repairs performed by the tenant.

The tenant's application is granted and the landlord's application is dismissed without leave. Each party is responsible for their own costs of the application.

Conclusion

The tenant is successful in the application requesting that the Ten Day Notice to End Tenancy for Unpaid Rent and the One-Month Notice to End Tenancy for Cause be

cancelled. The terms of the tenancy agreement have been clarified for the parties. The landlord's application is dismissed without leave.

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 08, 2013

Residential Tenancy Branch