



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 396629 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC,FF, O

Introduction

This hearing was scheduled to deal with a tenant's request to cancel a Notice o End Tenancy for Cause, and other issues. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matter(s)

After this application was filed, the landlord issued another Notice to End Tenancy to the tenant on January 6, 2014. Both parties were prepared to make submissions regarding this subsequent Notice to End Tenancy and I amended the Application to deal with it.

Issue(s) to be Decided

1. Should the Notices to End Tenancy be upheld or cancelled?
2. Is it necessary to issue any the orders to either party?

Background and Evidence

Pursuant to a verbal agreement, the tenancy commenced May 1, 2013. A security deposit has not been paid by the tenant. The tenant is required to pay rent of \$575.00 plus 50% of the hydro bill. There is one hydro meter shared between this unit and the unit below. The hydro account is in the name of the tenant living in the lower unit.

The landlord posted a 1 Month Notice to End Tenancy for Cause, in the approved form on the tenant's door on November 15, 2013 (the Notice). The Notice indicates the reasons for ending the tenancy are as follows:

- Tenant is repeatedly late paying rent with a handwritten notation added: “unpaid damage deposit”; and,
- Security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord had also ticked the box that states: “Tenant or a person permitted on the property by the tenant has:” but did not indicate which of the three specific reasons that follow this heading.

The tenant’s lawyer understood that the dispute revolves around the non-payment of hydro. The landlord agreed that one of the issues under dispute involves hydro and indicated that the tenant’s non-payment is affecting the tenant of the lower unit and the landlord. As both parties were prepared to deal with issues related to hydro I heard submissions in an effort to resolve this issue.

On January 6, 2014 the landlord issued another Notice to End Tenancy but this time it was on a form produced by the Branch in 1996 and the landlord served only two of the four pages of the Notice (herein referred to as the second Notice). The second Notice indicates the reasons for ending the tenancy are failure to pay rent for January 2014 and failure to pay hydro.

Below, I have summarized the parties’ positions with respect to each of the issues raised during the hearing.

Repeated late payment of rent/unpaid security deposit

The landlord indicated that the landlord was not pursuing “repeated late payment of rent” by way of this Notice. Rather, the landlord wished to end the tenancy for non-payment of the security deposit. The landlord acknowledged that a pet damage deposit was not requested although the tenant was permitted to have a pet.

The landlord submitted that a security deposit of \$287.50 was requested early in the tenancy and on multiple occasions since then, verbally, but that the tenant has been resistant to paying the deposit. On November 15, 2013 the landlord put the request in writing.

The tenant’s lawyer submitted that the tenant takes the position that the request to pay a security deposit was not made until after the tenancy commenced and that a requirement to pay a security deposit cannot be imposed retroactively.

Hydro

The landlord submitted that the hydro is in the name of the lower unit tenant and that the tenant has failed to pay 50% of the hydro bill as required under the terms of tenancy. The landlord acknowledged that the downstairs tenant received a couple of payments from the tenant earlier in the tenancy but then the payments stopped. The tenant sent the landlord a letter dated November 11, 2013 advising the landlord that he would not longer make payments to the downstairs tenant for hydro. The landlord stepped in and paid the downstairs tenant \$89.00 so that the downstairs tenant would not suffering a loss due to the tenant's refusal to pay his share of hydro.

The landlord was informed of the landlord's right to give the tenant a written demand for payment of utilities and if the tenant fails to pay utilities within 30 days of receiving the written demand, the landlord may treat the unpaid utilities as unpaid rent and issue a 10 Day Notice to End tenancy for Unpaid Rent or Utilities.

The tenant's lawyer pointed to the November 11, 2013 letter as the tenant's reasons for not paying for any more hydro. The content of the letter alludes to a shared meter and 100 Amp service as being related to the tenant's refusal to pay hydro.

Other issues

The landlord claims the tenant has interfered with the downstairs tenant's use and enjoyment of the property. In particular the yard-helper of the downstairs tenant left the property due to the tenant's behaviour toward him. The downstairs tenant wrote a letter to this effect but did not provide any dates or a more specific description of the disturbing behaviour.

The landlord claims the tenant has failed to pay rent for December 2013 and January 2013. The landlord was informed of the right to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

Analysis

Under the Act, a landlord may end tenancy for cause, as provided under section 47 of the Act, by serving the tenant with a 1 Month Notice to End Tenancy for Cause, in the approved form. The Act provides that if a Notice deviates from the approved form, the Notice may be found enforceable so long as the deviation does not affect its substance or mislead the tenant.

Where a tenant has received a 1 Month Notice the tenant may file to dispute the Notice within 10 days of receiving it. Where a Notice to End Tenancy comes under dispute the

landlord bears the burden to prove the tenancy should end for the reasons indicated on the Notice. The burden of proof is based on the balance of probabilities.

I provided the following findings and reasons with respect to the two Notices to End Tenancy issued to the tenant with respect to this rental unit.

1 Month Notice issued November 15, 2013

As the landlord indicated that “repeated late payment of rent” was not being pursued I have not considered this reason further.

This Notice indicates the tenant failed to pay a security deposit and I have considered this issue further, as follows.

The Act provides that a landlord may require the tenant to pay a security deposit when the tenancy forms or as a condition of entering into a tenancy agreement. The requirement to pay a security deposit is a term that must be included in a written tenancy agreement under the Act. The difficulty in this case is that there is no written tenancy agreement for me to refer to and I am left with disputed submissions of the parties.

I have no doubt the landlord requested the tenant to pay a security deposit at some point in time; however, in order to establish an entitlement to collect a security deposit the landlord must demonstrate that the requirement was communicated and agreed upon when the tenancy agreement formed. A tenancy forms when both parties reach an agreement with respect to the tenant’s occupation of the rental unit. In other words, if the landlord neglects to discuss payment of a security deposit and get the tenant’s agreement to pay that amount when the tenancy forms the landlord is not a liberty to demand it at a later time. I find the landlord failed to meet the burden to satisfy me that an agreement for the tenant to pay a security deposit was reached when the tenancy formed when I consider:

- the disputed submissions of the parties,
- the absence of a written tenancy agreement that would establish the requirement; and,
- several months of tenancy passed before the landlord put the request for a security deposit in writing; and,
- the parties met on October 19, 2013 to settle the amounts owed to the landlord at that time without payment or discussion of the security deposit.

In light of the above, I do not end the tenancy for failure to pay a security deposit.

Since the tenant was not required to pay a pet damage deposit when the tenancy formed I do not end the tenancy for failure to pay a pet damage deposit.

With respect to the tenant's failure to pay hydro, I accept that the tenant is required to pay 50% of the hydro bills based upon the undisputed evidence before me. In the absence of evidence to the contrary, I find that the requirement of the tenant to pay 50% of the hydro bills is not conditional upon receiving a separate hydro meter, more amperage, or the like. Thus, the tenant is cautioned that failure or refusal to pay utilities is ground for ending the tenancy.

As explained during the hearing, where a tenant fails to pay the landlord for utilities within 30 days of receiving a written demand to do so, the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities under section 26 of the Act. However, failure to pay hydro is not one of the permissible reasons provided for ending a tenancy under section 47 [*1 Month Notice to End Tenancy for Cause*] unless the tenant has paid the utilities late (more than 30 days after receiving a written demand) at least three times.

While I appreciate the downstairs tenant may be inconvenienced or aggravated by the tenant's non-payment of utilities when previous tenants readily paid upon request, the downstairs tenant has a remedy for collecting the tenant's portion of hydro, which is to submit hydro bills to the landlord and collect the tenant's portion from the landlord. Since it is the landlord that has a contract (ie: tenancy agreement) with the tenant the landlord may pursue the tenant for his portion of the hydro bill. Alternatively, the landlord may put the hydro account in the landlord's name and collect a portion of the bill from each tenant.

With respect to the landlord's submissions concerning treatment of the downstairs tenant's helper, I find the evidence is not sufficiently specific and not sufficiently indicated as a reason for ending the tenancy on the 1 Month Notice that was served upon the tenant. Therefore, I do not end the tenancy for this reason. However, I do caution the tenant that, under the Act, a tenant may be subject to eviction proceedings where he unreasonably disturbs or significantly interferes with another tenant's ability to use and enjoy the property.

Based on all of the aforementioned, I cancel the 1 Month Notice to End Tenancy for Cause issued on November 15, 2013.

Notice to End Tenancy issued January 6, 2014

This Notice is not a Notice to End Tenancy in the approved form. Since the form is so out-dated the reference to certain section numbers of the Act are incorrect and the missing pages of the Notice means pertinent information was not communicated to the tenant. Therefore, I find the Notice to End Tenancy issued on January 6, 2014 is not enforceable and I do not end the tenancy based upon this Notice.

Although I have found the Notice to End Tenancy of January 6, 2014 to be unenforceable due to the form used, it is important to note that this does not mean the landlord does not have grounds to end the tenancy. That being said, the landlord remains at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities should rent remain outstanding and/or the tenant fails to pay utilities within 30 days of receiving a written demand.

I make no award for recovery of the filing fee.

Conclusion

The Notice to End Tenancy issued November 15, 2013 is set aside and the Notice to End Tenancy issued January 6, 2014 is unenforceable.

The landlord is at liberty to issue a written demand to the tenant for payment of 50% of the utilities and, in doing so, must indicate the specific amount owed by the tenant. The tenant is required to pay that amount within 30 days of receiving the written demand, otherwise, the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The landlord remains at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent for any outstanding rent.

The tenant has been cautioned that unreasonable disturbance or significant interference with other tenant's ability to use and enjoy the property may be grounds for ending the tenancy in the future.

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: January 22, 2014

Residential Tenancy Branch

