



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

I note that from the outset of the hearing the tenant was aggressive and confrontational towards me and the landlords. I also note that the tenant became argumentative as I was trying to explain processes and question the tenant about specific aspects of his statements and requests.

During the course of the proceeding the tenant began using vulgarities and I cautioned the tenant at least twice that I may disconnect him from the proceedings if could not be conduct himself in a more cordial manner. The tenant eventually calmed down and the hearing proceeded without further incident.

The tenant sought to have the hearing adjourned to October 16, 2014. He stated that he had not received the landlord's evidence until September 4, 2014 so he wanted the same length of time that the landlord had to respond to his Application to submit his additional evidence. He stated he thought the landlord was only issuing the Notice to End Tenancy for Cause because of a fight he had with the landlord.

The tenant submitted that he had some additional evidence that he only obtained on September 16, 2014. He stated he has other evidence that will be available shortly and meetings scheduled to obtain additional evidence over the next couple of weeks. The tenant submitted that he did not submit the additional evidence he already had because it was too late according to the information he was given for his submission deadlines.

Residential Tenancy Branch Rules of Procedure outline specific deadlines for the submission of evidence by both the applicant (tenant) and the respondent (landlord). Rule 3.14 states the latest evidence must be received by the respondent from the applicant is 14 days prior to the hearing. Rule 3.15 stipulates that the respondent must provide their evidence to the applicant no later than 7 days prior to the hearing.

Rule 3.17 states, however, that evidence that was not available at the time the applicant made their application or the parties were required to provide their evidence (under Rules 3.14 and 3.15) the Arbitrator may consider whether or not to accept documentary evidence that is submitted. As the tenant did not submit any additional evidence prior to the hearing I could not consider whether to allow it. I note that the tenant did read one letter into the hearing.

Residential Tenancy Branch Rule of Procedure 6.4 sets out the criteria I must consider for granting an adjournment as follows:

1. The oral and written submissions of the parties;
2. Whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;
3. Whether the adjournment is required to provide a fair opportunity for a party to be heard;
4. The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking adjournment; and
5. The possible prejudice to each party.

I find the tenant's request for adjournment was primarily based on the length of time the landlords took to provide him with evidence. While I accept that the adjournment would allow the tenant more time to gather additional evidence I find the tenant has already been provided the opportunity to submit his evidence in accordance with the Rules of Procedure and he failed to do so.

The tenant has had since July 31, 2014 when he first submitted his Application to provide any evidence he intended to rely upon. I also note that the 1 Month Notice to End Tenancy for Cause issued on July 28, 2014 identified the reasons the landlord was seeking to end the tenancy. The Notice identified that in addition to the issue of significantly interfering with and unreasonably disturbing other occupants and the landlord the Notice indicated the tenant was in breach of material terms of the tenancy agreement.

The tenant had also received a letter from the landlord dated July 24, 2014 advising the tenant that he was in breach of two material terms of his tenancy agreement and that he must correct them before July 28, 2014. As such, I find the tenant was aware of the reasons the landlord was issuing the Notice to End Tenancy on the date that he received it and as such the tenant has had since then to gather and submit his evidence.

While I do not have sufficient evidence to establish that the tenant's actions for not providing or attempting to seek evidence to address all of the issues identified in the 1 Month Notice to End Tenancy for Cause were intentional I do find that the tenant was negligent in reviewing the full Rules of Procedure or contacting the Residential Tenancy

Branch to confirm how to deal with either requesting an adjournment or the filing of late evidence.

As such, I find the tenant's opportunity to be heard fairly is not impacted by not allowing an adjournment. I find that, because this issue deals with a notice to end tenancy that has an effective vacancy date that has already passed, the landlord would be prejudiced by an adjournment.

Based on the above, I dismissed the tenant's request for an adjournment. The hearing proceeded.

During the hearing, the landlords did not verbally request an order of possession should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and an order to have the landlord comply with the *Residential Tenancy Act (Act)*, Regulation or Tenancy Agreement, pursuant to Section 47 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of tenancy agreement signed by the tenant and the previous property manager on December 27, 2012 for a month to month tenancy beginning on January 1, 2013 for a monthly rent of \$425.00 due on the 1st of each month with a security deposit of \$212.50 paid.

The tenancy agreement includes two relevant clauses. Clause 11 states:

"Utilities that are not included in the rent or are not paid to the landlord are the responsibility of the tenant who must apply for hook up and must maintain current payment of the utility account. The discontinuation of utility service resulting from the tenant's cancellation or failure to maintain payment of his utility account is a breach of a material term of this Agreement. The landlord has the right to end the tenancy if the tenant fails to correct the breach within a reasonable time after receiving written notice to do so."

Clause 18 of the tenancy agreement states:

"Unless specifically permitted in writing in advance by the landlord the tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile, or other animal, domestic or wild, fur bearing or otherwise."

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause dated July 28, 2014 with an effective vacancy date of August 30, 2014 citing the

tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submits that they had been informed from the previous property manager that there has been a longstanding history of the tenant disturbing other occupants of the residential property, particularly the occupant above this tenant. The landlord submits that the tenant has not only disturbed the tenant but has also taken to harassing the occupant's mother on social media.

The tenant submits that he is being disturbed by the occupant above him. He proceeded to recite a list of a number of occasions, during the period since he received the 1 Month Notice, that the upstairs occupant has disturbed, particularly during the night and early morning hours. The tenant submits that the landlords are bullies and are trying to end a number of tenancies.

The tenant read into evidence a letter from friends who have great respect and trust for the tenant. He stated that the letter went on to say that these friends have had the tenant care for their children and they completely trust him doing so. The tenant did not indicate that the letter stated anything directly related to events at the residential property.

The landlord submits that when they were completing renovations in the building they discovered the tenant had two cats. The landlords also submit that the previous property manager informed the tenant had no power in his rental unit. The landlord submitted into evidence a copy of a letter dated July 24, 2014.

This letter addressed the tenant's treatment of the male landlord and advised the tenant that the landlord would give the tenant one more chance to not argue and conduct loud conversations. The letter also addresses the issue of the lack of hydro and the tenant's cats.

The tenant submits that he still does not have hydro hooked up in his rental unit but that he could call the hydro supplier on the date of the hearing and it would be turned on. He provided no reason as to why it was disconnected or why he did not turn it on in response to the landlord's letter of July 24, 2014.

The tenant submits that he does not have written permission from his previous property manager or landlord that would have allowed him to have pets. However, the tenant stated that the previous property manager was aware when he moved into the rental unit that he had pets and he was not asked for a pet damage deposit at the time; or was he required to have written permission.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; or
- b) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Based on the tenant's testimony that he could have hydro set up in his rental unit at any time and the fact that he has failed to do so since receiving the landlord's letter of July 24, 2014 I find the tenant has breached a material term of the tenancy agreement.

Further, I find that since the tenant believes he could have the hydro turned on immediately that providing the tenant 4 days, from July 24, 2014 to July 28, 2014 was sufficient and reasonable to allow the tenant to correct the breach of the material term.

Since the tenant has failed to correct the material term I find the landlord has authority under Section 47 to end the tenancy. As such, I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 28, 2014 to be valid and effective.

Having made the above findings, I find there is no need to determine any of the other causes put forward by the landlord are sufficient as grounds to end the tenancy.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety and order the tenant must vacate the rental unit, in accordance with the 1 Month Notice to End Tenancy for Cause issued on July 28, 2014.

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 22, 2014

Residential Tenancy Branch

