



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, O, FF

Introduction

This hearing was convened to address a claim by the tenant for an order setting aside a notice to end this tenancy, a ruling on whether or not the tenancy is a fixed term tenancy and an order permitting her to reduce her rent. Both participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the tenancy a fixed term tenancy?
Should the tenant be permitted to reduce her rent?

Background and Evidence

The parties agreed that the tenancy began on or about July 1, 2014 and that rent was set at \$1,350.00 per month. The rental unit is on one side of a home and is attached to a separate rental unit. The landlord resides in a third unit connected to the garage.

The parties agreed that on or about June 19 they met at the rental unit where the tenant viewed the unit and the parties discussed whether the unit would meet her needs. They further agreed that on that date, they signed a tenancy agreement. The tenant provided a copy of a tenancy agreement (the "Tenant's Agreement") which indicates that the tenancy was set for a fixed term of 6 months, ending on January 1, 2015, and that the tenancy would continue on a month to month basis after that. The Tenant's Agreement is initialled by both parties on the page setting out the fixed term and is signed by both parties on the final page. The landlord insisted that the Tenant's Agreement is not the agreement she signed and that she never would have agreed to the tenancy continuing on a month to month basis after the expiry of the fixed term. She acknowledged that the initial and signature appeared to be hers, but insisted that the agreement must have been changed. She testified that she was not 100% sure as her memory is faulty due to a serious illness, but she believed there was another agreement which she signed which also included the name of the tenant's child. The landlord testified that she could not locate her copy of the tenancy agreement.

The tenant testified that the Tenant's Agreement is the document signed by the parties on June 19. She testified that the landlord had 3 blank copies of a tenancy agreement on that date and that she filled out 2 identical copies at the landlord's request and that the parties signed both. The tenant took one copy and left the other with the landlord.

The tenant alleged that before moving into the rental unit, she discussed with the landlord her concern about vacating the unit during the holiday season. She testified that the landlord agreed to enter into a new tenancy agreement (the "New Agreement") ending her tenancy on July 1, 2015. The tenant testified that she filled out the landlord's last blank copy of the tenancy agreement and although the landlord promised to give her a copy, she never received one. The landlord vehemently denied having signed the New Agreement and testified that the only reason she would have considered extending the tenancy would have been if the tenant had been a good tenant.

The tenant testified that on November 28 she found a 1 month notice to end tenancy for cause (the "Notice") in her mailbox. The Notice alleged the following:

- The tenant has allowed an unreasonable number of occupants in the unit
- The tenant has significantly interfered with or unreasonably disturbed the landlord
- The tenant has seriously jeopardized the health or safety or lawful right of the landlord
- The tenant has put the landlord's property at significant risk
- The tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of the landlord

The landlord testified that the tenant has allowed her dog in the rental unit contrary to the terms of the tenancy agreement which she believed to constitute permitting an unreasonable number of occupants in the unit.

The landlord testified that she uses the garage as her personal living room and that the tenant moved a freezer into the garage which has used space needed by the landlord. The landlord claimed that she agreed to let the tenant move a freezer into the garage temporarily, but did not agree that it could stay permanently. The tenant testified that when they discussed the tenancy on June 19, the tenant expressed concern that there was no storage available in the unit and the landlord told her that she could keep her freezer in the garage.

The landlord testified that when the tenant moved into the unit, she had her own washer and dryer so she moved the landlord's washer and dryer into the garage and then into her shed. The landlord testified that the fact that the washer and dryer were moved has caused her extreme stress and her stress is aggravated when she catches a glimpse of the tenant's washer and dryer inside the rental unit. The tenant testified that her movers installed her washer and dryer in the unit and wrapped the landlord's washer and dryer in carpet before storing them.

The landlord testified that she gave the tenant permission to build a shed, but it was to be placed in a very specific location. She alleged that the tenant built a very large shed, placed it in

the wrong spot and did not secure a permit, so the shed is currently an illegal structure. The tenant testified that the landlord had suggested a much larger, more extravagant shed, but the landlord wanted the tenant to pay the cost up front and recoup it from the landlord over a year's time and the tenant could not afford it. The tenant testified that the shed had already been built by the time she realized she would need a permit and when she tried to purchase a permit, the city told her that only the owner could obtain it. The tenant indicated that she is willing to work with the owner to secure the permit.

The landlord testified that someone has created a problem with her telephone service and she believes that while the tenant did not purposely create this problem, she is exacerbating it because the tenant has not been home when the landlord's provider needs to access the rental unit. The landlord suggested that the tenant is listening in on her telephone calls and indicated that she is now reluctant to discuss anything important on the telephone because her privacy has been compromised. The tenant testified that she is willing to work with the landlord's service provider and allow them access if required.

The tenant testified that when she purchased the shed, the landlord agreed to pay her back over the course of a year and suggested that the tenant deduct up to \$100.00 per month from her rent until the shed was fully paid. The tenant produced a document dated June 24, 2014 which is signed by both the landlord and the tenant and states:

Shed will be built 16x16 [landlord's name] will pay out shed costs over 12 months
to be deducted from rent monthly

The landlord denied having signed that document and alleged that the tenant forged the document.

The tenant seeks an order permitting her to reduce her rent by \$100.00 per month until the shed is completely paid for.

Analysis

First addressing the question of the tenancy agreement, I find it more likely than not that the Tenant's Agreement is the tenancy agreement that the landlord recalls having signed on June 19. I have arrived at this conclusion because the landlord's memory is by her own admission faulty and there is no indication that the document has been forged or altered. The agreement sets out a fixed term and I believe the landlord simply failed to read the form carefully when she signed it and believed that the only thing she needed to do to establish a 6 month tenancy was to indicate an end of tenancy date. I find insufficient evidence to establish that the New Agreement existed or if it does exist, what the terms of that agreement are. I find that the only written tenancy agreement and the one that is binding on this tenancy is the Tenant's Agreement and I find that as the last day of the fixed term has passed, the parties are now in a month to month tenancy.

I find that the landlord has failed to establish that she has cause to end the tenancy. A dog cannot be considered an occupant and the landlord has not proven that it is a term of the tenancy agreement that the tenant not have a dog in the house, so I find that this cannot form the basis for ending the tenancy.

I find that the landlord is hyper sensitive and has allowed herself to react in an extreme fashion to events which should not have caused her the level of distress she is experiencing. I find that the landlord agreed to allow the tenant to store her freezer in the garage and eventually changed her mind for some reason. I find that the landlord is obligated to permit the tenant to keep the freezer in the garage and is also obligated to permit her access to the freezer as required.

I find that the landlord permitted the tenant to move the landlord's washer and dryer from the rental unit and store them in the shed and I find that the landlord simply changed her mind at some point. I find that the tenant has not breached the Act or tenancy agreement by moving and storing the washer and dryer. I note that the landlord ultimately benefits from the tenant using her own washer and dryer as the landlord's machines will not be subject to wear and tear.

I find that the landlord gave the tenant permission to build the shed. The landlord has given no evidence as to the location on the property at which the shed was to be built and I therefore find that the tenant has not breached the Act or tenancy agreement by building the shed. I direct the tenant to work cooperatively with the landlord and provide her with the information she requires in order to allow the landlord to obtain the permit she requires for the shed. I note that the shed is a fixture on the property from which the landlord will continue to benefit.

I find that there is insufficient evidence to show that the tenant has interfered with the landlord's telephone line. The parties are encouraged to work cooperatively with the service provider to assist them in their investigation of the landlord's ongoing problems with the telephone service. I direct the tenant to provide the landlord with the alarm code for the rental unit in order to allow the landlord to enter the unit while the tenant is not at home, provided that the landlord provides at least 24 hours written notice.

I have found no evidence that the tenant has breached the Act or the tenancy agreement and I find that the landlord has failed to prove that she has grounds to end the tenancy. For this reason I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

I find that the document in which the landlord agreed to pay for the shed is not forged but is an authentic document which represents an agreement of the parties. I have found no evidence whatsoever which would lead me to believe that the tenant would forge this document. Rather, I find it reasonable that the landlord would offer to pay for the shed as she wanted the shed to be built and she will benefit from it. **Beginning in February 2015, the tenant may deduct \$100.00 from each rental payment until the value of the shed is paid off. I direct the**

tenant to provide the landlord with a copy of the invoice for the shed so both parties are clear as to the value of the shed. The tenant should retain the original invoice.

As the tenant has been entirely successful in this application, I find that she should recover the \$50.00 filing fee. The tenant may deduct this from her rent in February, which means that in February her rent will be \$1,200.00 after she deducts the \$100.00 payment for the shed and the \$50.00 filing fee.

Conclusion

The Notice is set aside and the tenancy will continue on a month to month basis. The tenant will deduct \$150.00 from her rent in February and \$100.00 from each rental payment thereafter until the shed is paid off. The tenant will provide the landlord with a copy of the invoice for the shed materials.

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 12, 2015

Residential Tenancy Branch

