



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT, CNC, OLC, RP, LRE, RR, FF, O

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution made on January 27, 2015. The tenant has applied requesting more time to dispute a 1 month Notice ending tenancy for cause, to cancel the Notice, compensation for damage or loss under the Act, an Order the landlord comply with the Act, provide services or facilities required by law, suspend conditions of entry to the unit by the landlord, that the tenant be allowed to reduce rent for services, repairs or facilities agreed upon but not provided and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlord confirmed receipt of the tenant's application on February 3, 2015. The tenant submitted and served a monetary worksheet and a copy of the Notice in dispute with his application.

The landlord made 2 evidence submissions; a copy of the tenancy agreement and a separate 2 page written response. The tenant was given the evidence 2 days prior to the hearing. The landlord was served with Notice of the hearing in adequate time to allow service of evidence to the tenant at least 7 days prior to the hearing, as required by the Rules of Procedure. As that evidence was not given to the tenant within the required time-frame it was set aside. The landlord was at liberty to make oral submissions.

The tenant indicated several matters of dispute on his application. I confirmed that the main issue was the Notice to end tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the Notice ending tenancy. Therefore, pursuant to section 2.3 of the Rules of Procedure, I dealt with the tenant's request to cancel the Notice ending tenancy for cause issued on January 13, 2014. The balance of the tenant's application is dismissed with leave to re-apply.

The tenant and landlord confirmed that the tenant received the Notice on January 17, 2015. The tenant applied to cancel the Notice on January 27, 2015. As the tenant applied to dispute the Notice on the 10th day after receiving it; the tenant applied within the required time-frame.

Issue(s) to be Decided

Should the 1 month Notice ending tenancy for cause issued on January 13, 2015 be cancelled?

Background and Evidence

This month-to-month tenancy commenced on January 22, 2014. Rent is \$900.00 per month, due on the 22nd day of each month. A security deposit in the sum of \$450.00 was paid.

The tenant resides in a basement unit with his daughter; there are occupants of an upper level rental unit owned by the landlord.

There was no dispute that the tenant received a 1 month Notice ending tenancy issued on January 13, 2015 with an effective date of February 21, 2015. The Notice was served on January 17, 2015.

The Notice gave the following reasons for ending the tenancy:

- the tenant has been repeatedly late paying rent;
- 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 engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The landlord said that the tenant always fails to pay his rent on time. The landlord will go to the unit to pick up the rent and the tenant will not answer the door. The landlord finds the tenant unreliable. The landlord could not provide any detail such as which months the tenant has paid late or the date the payment was given. There was no agreement between the parties on any set method of paying rent.

The landlord testified that in November 2014 there was some sort of conflict with the occupants of the upper unit and that they felt threatened by the tenant. The landlord said there have been constant text messages related to problems and that the tenant yells at his daughter. The landlord has attempted to have the tenant meet with the occupants of the upper unit, but he has refused. When the conflict occurred in the November the landlord's spouse was out of the country, which limited the landlord's ability to attend at the rental unit.

The tenant is bothering the occupants in the upper unit over the delivery of mail.

The landlord stated the tenant will not return their calls of text messages or telephone calls.

In relation to illegal activity, there have been occasions when the police have attended at the rental unit. This is a concern to the occupants of the upper unit. The landlord does not know why the police have gone to the unit.

I declined to take the tenant's submission in relation to the Notice.

General discussion regarding the landlord's right to enter the rental unit took place. I informed the parties that if the landlord wishes to show the unit to potential purchasers or to enter for the

purpose of repairs, inspection or for any other reasonable purpose, access must be made in accordance with the legislation.

Discussion in relation to payment of rent also occurred. It was suggested the tenant pay rent via post-dated cheques. The tenant said he may place the rent cheque in the mail in advance of the rent due date. He was warned he must take delivery time into account. The landlord is willing to have the tenant bring the rent to their home and to issue the tenant a receipt, confirming the date the cheque is given to the landlord. The landlord may also go to the rental unit to pick up the rent; it was suggested that a set time be pre-arranged and if the tenant is not home the tenant could leave the cheque for the landlord. The parties were encouraged to create a set method of payment.

Analysis

After considering all of the testimony evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenancy should end for the reasons provided on the Notice.

A tenancy may not be ended based on vague allegations. The landlord could not provide any evidence of the date rent has been paid, in support of the allegation the tenant has been repeatedly late. The method of rent payment also appears to be potentially contributing to any issues related to rent payment. The parties were encouraged to reach some sort of agreement; either post-dated cheques, electronic transfer, pick-up by the landlord or delivery by the tenant. The parties need to have a clear method of rent payment that allows the tenant to ensure payment is made by the 22nd day of each month.

In relation to disturbances; the alleged event that occurred in November 2014 is dated and little detail of that incident was supplied. The occupants did not provide a statement or attend to testify. A Notice issued 2 months after the alleged incident does not support the allegation that the disturbance reported should end the tenancy. Further, there was no evidence the landlord carried out any investigation of the allegation, in order to determine if it was valid.

The other issues raised by the landlord were minor and insufficient to end a tenancy. If the tenant will not answer the door, return text messages or telephone calls the landlord is at liberty to communicate with the tenant, in writing.

The parties were encouraged to communicate in writing. This provides a clear, non-confrontational method of communication; with each party retaining a record of that communication. The parties are having difficulty with the relationship and were encouraged to become better aware of their rights and obligations. For example, the landlord was informed that the tenant does not have an obligation to meet with the occupants of the upper unit. When conflict occurs between tenants in different units it is up to the landlord to investigate and to issue warnings or take other steps, if appropriate.

In relation to the allegation of illegal activity; there was no evidence before me that the tenant has engaged in any illegal activity. The presence of the police at the tenant's unit could be for any number of reasons. The landlord provided no evidence the tenant has engaged in illegal activities that would affect the safety, quiet enjoyment or physical well-being of the other occupants or the landlord.

Therefore, I find that the 1 month Notice ending tenancy for cause issued on January 13, 2015 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

As the tenant's application has merit I find the tenant is entitled to deduct the \$50.00 filing fee from the next month's rent due.

Section 29 of the Act, setting out the landlord's right to enter the rental unit, is appended following the conclusion of this decision. If a Notice of entry is posted to the door, section 90 of the Act determines service is deemed on the 3rd day after posting. Entry may then be made on the 4th day after posting; based on an appropriate notice of entry.

Conclusion

The 1 month Notice ending tenancy for cause issued on January 13, 2015 is of no force and effect.

The balance of the tenant's application is dismissed with leave to reapply.

The tenant applied to cancel the Notice within the legislated time-frame.

The tenant is entitled to deduct the \$50.00 filing fee from the next month's rent due.

This decision is final and binding and 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: February 20, 2015

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

