



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KS&SY Hung Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MND, MNSD, MNDC, CNE, CNC, MNDC, RR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order and a cross-application by the tenant for an order setting aside a notice to end this tenancy, a monetary order and an order permitting her to reduce her rent. Both parties participated in the conference call hearing.

At the hearing, the tenant advised that she had submitted evidence, which included documents, photographs and a USB drive. The landlord denied having received the evidence which the tenant claimed she sent to the landlord via courier. I was not satisfied that the landlord had a copy of the tenant's evidence as she provided no evidence to corroborate her claim that she had sent it to him via courier and I therefore declined to consider the tenant's evidence.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the landlord entitled to a monetary order as claimed?
Is the tenant entitled to a monetary order as claimed?
Should the tenant be permitted to reduce her rent?

Background and Evidence

The parties agreed that the tenancy has been in place for approximately 2 years and that the tenant's rent is set at \$1,050.00 per month, payable in advance on the first day of each month. They further agreed that on April 28, the landlord served the tenant with a one month notice to end tenancy for cause (the "Notice"). The Notice alleged the following:

- The tenant has seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
- The tenant has put the landlord's property at significant risk; and
- The tenant has not done required repairs of damage to the unit.

The landlord gave testimony about a number of grievances with the tenant and cited several sections of the Act which he believed the tenant had violated. However, I have restricted my

comments in this decision to the 3 grounds identified in the Notice. The landlord may have other grounds for ending the tenancy, but as he has not made those allegations in the Notice, they cannot be considered in this proceeding.

I note that the tenant also gave extensive testimony about her belief that the landlord has interfered with her business, which involves subletting other units she has rented from the landlord. I repeatedly advised the tenant that this evidence is irrelevant to the claim at hand and I have not considered that evidence in my deliberations.

The landlord provided a February 2014 violation notice from the fire department which ordered the landlord to remove unauthorized locks from interior doors, remove walls by the stove, clear pathways throughout the unit and remove garbage from the back of the building. The landlord also provided a July 2014 city bylaw infraction notice citing the landlord for excessive garbage in a parking stall and a March 2014 infraction notice requiring that combustible materials be removed and barriers inside the unit to be removed. The parties agreed that fines were imposed which the tenant paid. The landlord claimed that he asked the tenant in December 2014 to address these issues and claimed that she cleaned up approximately 75% of the items which were causing problems, but over time, these items have built up again. He said that the fire department has come back to the building to inspect, but the landlord provided no evidence that further citations were received. The landlord claimed that the tenant still had combustible items in the rental unit, specifically identifying it as a motor.

The landlord claimed that the tenant had caused damage to the unit by putting up barriers to make bedrooms and provide privacy to each room and that she had also damaged the flooring in the unit. He provided photographs of the flooring and of the barriers, but no photographs of the damage allegedly caused by the barriers. The parties agreed that the landlord gave the tenant a letter in April 2015 requiring her to complete repairs by April 27 and testified that repairs have not been completed.

The landlord believes that the tenant poses a significant risk to the property as the number of items she has cluttering her unit and the common areas and the combustible materials pose a fire hazard.

The tenant claimed that she has addressed all of the issues noted in the violations received in 2014 and testified that the motor she has in the rental unit is electric and does not pose a risk. The tenant denied that she poses any risk to the landlord, other occupants or the residential property.

The parties agreed that the tenant failed to pay \$349.92 of her rent due for the month of June 2015. The tenant claimed that this was because she had a business subletting other units in the building and the landlord "stole" her subtenants, entering into direct tenancy agreements with them so they no longer paid rent to her. She claimed that because the landlord removed her source of income, she could not pay the rent.

The landlord seeks to recover estimated costs of removing the tenant's belongings and cleaning and repairing the rental unit at the end of the tenancy.

The tenant seeks an award of \$5,000.00 but on her application for dispute resolution did not describe what that amount was for.

The tenant did not elaborate on her claim for a rent reduction either in the hearing or on her application for dispute resolution.

Analysis

The landlord has the burden of proving that he has grounds to end the tenancy. The landlord made 3 allegations on the Notice. He provided evidence of disturbance to other occupants of the building, but as this is not one of the grounds for eviction listed on the Notice, I have not considered this evidence as relevant. I am unable to find that the health, safety or lawful right of other occupants or the landlord has been seriously jeopardized or that the tenant has placed the landlord's property at significant risk. City inspectors and the fire department attended at the unit in 2014 and cited the landlord for issues created by the tenant, but the tenant claimed to have corrected those issues and although the landlord testified that subsequent inspections have been performed, because no subsequent citations, warnings or violation notices were issued, I find insufficient evidence to show that a significant risk is at play or that anyone's health, safety or lawful right is in serious jeopardy. The tenant clearly has an excess of belongings and is failing to keep those in the rental unit, but I am not persuaded that the clutter forms a significant risk. I find insufficient evidence to prove that the presence of an electric motor on the rental unit poses any kind of risk, particularly since it does not appear to have concerned inspectors or the fire department.

The Act allows landlords to end a tenancy when a tenant has failed to perform required repairs of damage to the unit, but the landlord has provided no evidence as to why these repairs should be performed before the end of the tenancy. I find it unlikely that this provision of the Act was designed to allow landlords to end a tenancy for minor repairs and as the issues noted by the landlord do not appear to place people or the property at risk, I see no reason why the repairs cannot be performed at the end of the tenancy.

I find that the landlord has not proven one of the 3 grounds enumerated above and therefore find that the landlord has not proven that he has the right to end the tenancy. I therefore order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue. I note that the landlord is free to serve further notices to end tenancy on other grounds, should they believe the tenant has given them cause to do so.

I do not accept that the tenant is relieved of her responsibility to pay for the balance of June's rent because the landlord has stopped her from running her business in other units. The tenant has a contractual obligation to pay the full amount of rent on the first day of each month and I find that she failed to meet that obligation in the month of June. I find that the landlord is entitled

to recover the unpaid rent for June and I award him \$349.92. I grant the landlord a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The landlord may serve the tenant with a 10 day notice to end tenancy for unpaid rent should she fail to pay the arrears.

I dismiss with leave to reapply the landlord's claim for compensation for losses he believes he may suffer in the future. The landlord is free to bring this claim should these losses actually be realized.

I dismiss with leave to reapply the tenant's claim for a monetary order and rent reduction. The landlord has a right to know the claim against him and I find that the tenant's failure to explain those claims on her application for dispute resolution prevented the landlord from preparing to defend himself against those claims.

As both parties have enjoyed some success, I find they should each bear the responsibility for their own filing fees.

Conclusion

The Notice is set aside and the tenancy will continue. The landlord is granted a monetary order for \$349.92.

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: June 17, 2015

Residential Tenancy Branch

