



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, CNR, ERP, RP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for cause, for an order cancelling a notice to end the tenancy for landlord's use of property; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order that the landlord make emergency repairs for health or safety reasons; and for an order that the landlord make repairs to the unit, site or property.

The landlord and the tenant attended the hearing and the landlord was represented by an agent. The landlord did not testify, however the tenant and the landlord's agent each gave affirmed testimony, and the parties were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the tenant advised that the landlord's evidence package was received a day late, but consented to the inclusion of that evidence. Further, at the end of the hearing, the landlord indicated that he had received the tenant's last evidence package after the time to exchange evidence was closed. The tenant disagreed stating that the landlord's evidence was late so the tenant could not respond to it sooner. Since both parties have provided late evidence, and the objection was made by the landlord at the conclusion of the hearing after it had been referred to, I decline to exclude any of it. All evidence and testimony has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy for cause was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the notice to end the tenancy for landlord's use of property was issued in accordance with the *Residential Tenancy Act*?

- Has the landlord established that the notice to end the tenancy for unpaid rent or utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began 11 years ago and the tenant still resides in the rental unit. No written tenancy agreement was prepared and the landlord did not collect a security deposit or a pet damage deposit from the tenant. Rent in the amount of \$600.00 per month is payable on the 1st day of each month. Rent for the month of September, 2015 has not yet been paid, but there are no other rental arrears.

The landlord's agent further testified that the rental unit is a basement suite and the landlord resided upstairs and there was no separation between them so the tenant could access both units easily. As a result, the landlord moved out in the spring of 2015. The tenant then sublet the unit and had difficulty with the sub-tenants who did some damage to the property, including putting a mattress on the roof.

The landlord didn't feel safe, nor did the landlord's agent whose wife was insulted by the tenant's rude behaviour and sexual comments. The tenant won't allow the landlord or agent into the rental unit, and has said rude things in a threatening manner, yelling at them and telling them to go to hell.

The landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause on June 25, 2015 and has provided a copy for this hearing. The notice is dated June 25, 2015 and contains an effective date of vacancy of August 1, 2015. The reasons for issuing it are:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right or another occupant or the landlord;
 - put the landlord's property at significant risk.

Also on June 25, 2015 the landlord personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided. It is

dated June 25, 2015 and contains an expected date of vacancy of September 1, 2015. The reason for issuing it is:

- The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord's agent testified that the tenant had called the City and an inspector attended and found 2 stoves. They asked that one be removed so that it's a single dwelling home. Also, the safety authority attended to ensure that one had been removed and that the electrical had been done correctly and noticed speaker wire between a light switch and a light. Certain breakers were then turned off and were not permitted to be back on until the electrical was up to code. The landlord needs to open up the walls, remove drywall to make the wiring visible to the safety authority, and when chasing wires they have to find where they run and then re-run the circuit and re-insulate. The landlord will likely have to remove most of the drywall throughout the home to see if other speaker wires exist upstairs and down. Electrical permits have been obtained, but the landlord needs access to the property in order to draw up a plan to submit to the City to show how the whole house will be brought up to code, including insulation.

The landlord's agent further testified that the landlord and the landlord's agents cannot go onto the property to do any repairs without an altercation with the tenant. An electrician was threatened by the tenant, who said he'd have the electrician fired, so the electrician has refused to return. The landlord does not want to send other tradespersons for the risk of a fight.

On July 5, 2015 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by placing it in the mailbox. A copy of that notice has also been provided and it is dated July 5, 2015 and contains an expected date of vacancy of July 5, 2015 for \$600.00 of unpaid rent that was due on July 1, 2015. The landlord's agent testified that the tenant paid \$50.00 at the beginning of the month and the balance on July 29, 2015. No receipt was given.

During the course of the hearing the landlord's agent orally requested an Order of Possession.

The tenant testified that the tenancy was fine until the agent took over for the landlord, and denies that the landlord moved out as a result of the access between units; the landlord issued a notice to end another tenancy to another tenant for a different rental property and then moved into it.

The electrician that the landlord's agent spoke of was incompetent and the tenant hired another who called the City. That person was not afraid and would come to do the work but the landlord has to verify the payment. The Safety Authority guy attended the rental unit saying what had to be done, and the landlord has used that to evict the tenant. Panel boxes are upstairs, and all that needs to be done is to move a light switch in the lower level which is the legal suite. Only about 10% is drywall, the remaining is cedar panelling. The stove was taken out of the upstairs suite.

The tenant has an oral agreement with the landlord with respect to payment of rent, and has provided a document which the tenant testified is the tenant's authority to act as property manager and is a lease agreement. The document is entitled Property Management/Lease Agreement and is signed by the tenant and the landlord, and states as follows: "This letter is to confirm (the tenant) as property manager for the residence of (address). The time period spans from May 1, 2015 to October 2017, in which time he will also be a renter for the basement suite."

The tenant's rent is \$600.00 per month, and as the house manager is responsible for finding tenants for the upstairs unit, whose rent is \$900.00 per month. The oral agreement is for the tenant is to deposit \$1,000.00 per month into the landlord's account, and from the \$500.00 balance, the tenant keeps \$50.00 for internet, which is included in the rent, keeps \$150.00 for caring for the property, leaving a \$300.00 balance to pay water, electric and other expenses for the property. As long as the landlord receives \$1,000.00, the rest is used for paying bills.

The tenant collected \$900.00 rent from tenants upstairs who were resident for 2 months and put \$1,000.00 in the landlord's account. The tenant has paid the water bill, the electrician, and still owes for electricity. The tenant has provided evidence of having paid the landlord and paid some of the bills. Also provided are invoices to prove that the tenant got a permit to decommission the house and take out the 220 wiring, paid an electrician to remove the wiring, do more wiring and the panel box.

The tenant was to give the landlord \$600.00 for July's rent, but the money the landlord claims the tenant didn't pay was used to pay bills, which is what the parties agreed to. The upstairs unit cannot be rented, so the tenant will use his rent money to pay bills.

Analysis

The issues before me are whether or not the notices to end the tenancy should be cancelled and whether or not the tenant has established that the landlord should be ordered to make emergency and other repairs to the rental unit.

I have read all of the material provided by the parties, and in particular, I refer to a letter by the tenant dated July 5, 2015 which states, in part, "... if they have given me a one month notice I am allowed to keep the last month's rent, but I don't need to do that as I paid it via utilities as I am the property manager, and I have no intentions of moving from here." Also of particular note is the document entitled "Property Management/Lease Agreement." It seems that the tenant has an incorrect view of the *Residential Tenancy Act*.

- Firstly, a tenant is not entitled to keep the last month's rent if a landlord issues a 1 Month Notice to End Tenancy for Cause. A landlord is required to repay the tenant the equivalent of one month's rent if the landlord issues a 2 Month Notice to End Tenancy for Landlord's Use of Property and if the tenant actually moves out.
- Secondly, a landlord may issue a 1 Month Notice to End Tenancy for Cause whether the tenancy is a month-to-month or fixed term tenancy, so long as the landlord has cause.
- Thirdly, I am not satisfied that the "Property Management/Lease Agreement" is a valid or enforceable agreement for a fixed term tenancy or for a property management contract. The document contains absolutely no terms except for its duration, and I find it to be unconscionable and not enforceable. With respect to the "Property Management" portion, an agreement between a property manager and a landlord is not a tenancy agreement, and my jurisdiction is with respect to a landlord and tenant relationship under the *Act*. What the parties agree to for employment or other purposes is not part of this dispute or enforceable under the *Act*.
- Fourthly, the *Act* provides for a tenant to make emergency repairs in certain situations and then provide the landlord with a receipt for reimbursement, and the landlord may take over the emergency repair at any time. The tenant does not have exclusive power to make whatever decisions or repairs and deduct the amounts from the rent. The tenant claims that's how the parties have dealt with this tenancy for a long time, and has provided receipts and other such documentation to establish that, but I cannot make an order in those terms. There is no written agreement that the tenant is permitted to keep any portion of the rent, claim back any expenses, or deduct any amount from the payment of rent to the landlord.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act* which can include the reason(s) for issuing it. I have reviewed the notices given by

the landlord, and I find that they are all in the approved form and contain information required by the *Act*. The reasons for issuing them are in dispute.

With respect to the 1 Month Notice to End Tenancy for Cause:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right or another occupant or the landlord;
 - put the landlord's property at significant risk.

I cannot find any significant interference or disturbance. Nor can I find that the tenant has seriously jeopardized the health or safety or lawful right of anyone, or that the tenant has put the landlord's property at significant risk. To re-cap the testimony of the landlord's agent, the landlord didn't feel safe, nor did the landlord's agent whose wife was insulted by the tenant's rude behaviour and sexual comments. The tenant won't allow the landlord or agent into the rental unit, and has said rude things in a threatening manner, yelling at them and telling them to go to hell. The tenant denies that and testified that the police advised that the complaint was unfounded. I am not satisfied that the landlord had such cause to issue the 1 Month Notice to End Tenancy for Cause and I hereby cancel it.

With respect to the 2 Month Notice to End Tenancy for Landlord's Use of Property, the *Act* states that the landlord must have a good faith, honest intention to do with the rental unit whatever is contained in the notice. In this case, the notice states, "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant." The landlord has provided a copy of the electrical permit and the landlord's agent testified that the electrical needs to be corrected, which will require opening up walls, removing drywall to make wiring visible, chasing wires to find where they go, perhaps re-run the circuit and then re-insulate. He also stated that the landlord needs to access the property in order to draw up a plan for the City. The tenant denies that and testified that panel boxes are upstairs, and all that needs to be done is moving a light switch in the lower level which is the legal suite and the stove has already been taken out of the upstairs suite. He also testified that only 10% of it is drywall and mostly cedar panelling. In light of the tenant's application for an order that the landlord make emergency repairs for health or safety reasons and to make repairs the rental unit, I am satisfied that repairs are required. Whether or not the rental unit needs to be vacant in order to do that, I refer to the electrical permit and inspection report of the City which states that the upper level is not in compliance and that the lower floor will be required to be reviewed.

The tenant denies that vacant possession is required, and I find that the landlord has failed to establish that it is. Therefore, I hereby cancel the notice to end the tenancy.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, under the residential tenancy laws for this province, rent is rent and employment is employment. They are 2 very different things with very different rules. I have no authority to make any findings about how much money a tenant should receive in exchange for work done for a landlord or about any oral agreement to that effect. My authority is to decide whether or not the tenant paid the rent. The parties agree that the rental amount is \$600.00 per month. The landlord's agent testified that all rent is paid to date with the exception of this current month. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for unpaid rent in the amount of \$600.00 that was due on July 1, 2015. Once served, the *Act* provides the tenant with 5 days to pay the rent in full, in which case the notice has no effect, or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out by the effective date of the notice, which must be no less than 10 days after the tenant receives it. The tenant paid the rent, albeit not until July 29, 2015, but disputed the notice within the time prescribed. The tenant spoke of a verbal agreement with the landlord about paying bills, and testified that he will pay the bills with his rent money, but there is no authority for that nor any evidence to substantiate that. Rent is rent and the tenant seeks an order to enforce the tenant's rights under the *Act* when the parties have failed to comply with the *Act*.

Where a landlord collects rent after the effective date of a notice to end the tenancy, the landlord must make it clear to the tenant that the money is being accepted for use and occupancy only and does not serve to reinstate the tenancy. In this case, the landlord did so in writing, and therefore I find that the landlord has not reinstated the tenancy by collecting rent after the effective date of the notice.

In the circumstances, I find that the tenant did not pay the rent within 5 days as required by the *Act* and is therefore conclusively presumed to have accepted the end of the tenancy. During the hearing the landlord orally requested an Order of Possession, and where a landlord makes such a request during a hearing on a tenant's application to cancel such a notice, and the notice is upheld or the tenant's application is dismissed, I must issue the Order of Possession. The effective date of vacancy has already passed and I order 2 days notice to the tenant.

Since the tenancy is ending I dismiss the tenant's application for an order that the landlord make emergency repairs for health or safety reasons and the tenant's application for an order that the landlord make repairs to the unit, site or property.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated June 25, 2015 is hereby cancelled.

The 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 25, 2015 is hereby cancelled.

The tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is hereby dismissed.

The tenant's application for an order that the landlord make emergency repairs for health or safety reasons is hereby dismissed.

The tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 07, 2015

Residential Tenancy Branch

