Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, LRE, FF

Introduction
This hearing dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause, limiting the landlord's right of entry and allowing the tenant to change the locks. Both parties appeared and had an opportunity to be heard. In his submissions the tenant asked for relief not disclosed on the application for dispute resolution including orders returning $50.00 paid for a swing set to the tenant; ordering the landlord to install the propane tank as promised on the addendum to the tenancy agreement; power wash the exterior, and install an accessible shut-off valve for the washing machine. I advised the parties that any of these additional issues that could be dealt with briefly in this hearing would be decided; the others would be separated from this application and the tenant would have to re-apply for dispute resolution on those items.

Issue(s) to be Decided
- Does the landlord have cause, within the meaning of the *Residential Tenancy Act*, to end this tenancy?
- Should the landlord's right of entry be dismissed and, if so, on what terms?
- Should the tenant be allowed to change the locks on the rental unit?

Background and Evidence
This tenancy commenced August 15, 2015. There was a written tenancy agreement which specified that the tenancy was for a one year fixed term and would continue thereafter as a month-to-month tenancy. The monthly rent of $1700.00 is due on the first day of the month. The tenant paid a security deposit of $850.00.

The landlord and her husband had living in this house before they moved to Alberta. This is the first time they have rented it.

The house is three stories. On the main level is the garage and a self-contained suite. The upper two levels comprise the main living quarters of the house. The landlord testified that they offered to rent the suite to the tenant for an additional $500.00 per month but he declined. They did verbally agree not to rent the suite to anyone else and have only used the space for storage. The tenant testified that he had no interest in the suite; his main issue is that he did not want anyone else living in the house, and the issue of access only arose when the location of the shut-off valve became a concern.

Before the landlord moved she had a garage sale. One of the items for sale was a metal swing set. The tenant's wife said she wanted it and the landlord kept it out of the garage sale for her. Ultimately, the tenant's wife paid $50.00 for the set. The tenant is now of the view that the swing set was a fixture and therefore they should be reimbursed $50.00. The landlord says the swing set was not permanently affixed to the yard. The tenant thought it might be but could not say for sure. The tenant did not file a photograph of the swing set.

At the beginning of the tenancy there some confusion about the date the rent was due and payment of the security deposit. There was a strongly worded e-mail exchange on the issue.

In September there was an issue regarding repairs to the garage door. The landlord was unhappy that the tenant did not report the issue for several days and the tenant was unhappy that the landlord wanted him to make the arrangements for the repair. There was a strongly worded e-mail exchange on the issue. Ultimately, the garage door was repaired.

It was at this time that the tenant advised the landlord that he would not communicate with her or her husband by telephone, only by e-mail. The landlord and her husband expressed in their e-mails why they found this restriction practically difficult but the tenant was adamant.

Although the tenancy agreement clearly stated that the tenancy would continue as a month-to-month tenancy in mid-April the tenant asked the landlord if she would like to renew the contract. The landlord said she would. On July 14 the landlord sent the tenant a proposed contract with additional terms in the addendum; one of which was: "The landlord will have full access to the suite starting August 15, 2015." The landlord subsequently presented the tenant with a second proposed contract with some additional terms such as:" The tenant is responsible for yard maintenance and snow removal."

The tenant took offense to the drafts presented by the landlord and told her his lawyer would be contacting her. There was a strongly worded e-mail exchange at the conclusion of which the tenant's lawyer advised the landlord that the tenancy was automatically continued as a month-to-month tenancy and new terms could not be imposed without the agreement of both parties.

In the summer there was a very minor leak in the washing machine, which is located on the third floor. As a result of the repairman's visit the tenant became very concerned about the location of the shut-off valve. Eventually he learned that the main shut off valve is located in the suite. There was a strongly worded exchange of e-mails about access to the suite. The tenant complained that the landlord took over a month to provide the access code to the suite and that only after he threatened to complain to the local municipal authorities. The landlord said the tenant always had the code as it is the same as the one on the back door of the house. At the end of the dispute the tenant was given the code to the door to the suite and the landlord made back-up arrangements with the next-door neighbour, whom the tenant described as a very nice fellow.

As of the date of the hearing the tenants have always been able to use the washing machine, there is no visible damage from the leak, and the tenants have access to the suite and the shut-off valve, if necessary.

The landlord had the tenant served with a 1 Month Notice to End Tenancy for Cause on July 15, 2015. The effective date of the notice was stated to be August 15, 2015. The reasons stated on the notice were:

- The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- The tenant has put the landlord's property at significant risk.

The landlord explained that the issue is the poor communication with the tenant. The fact that he won't talk to them and has taken some time to report past repair issues when they do not live in this community may put their property at significant risk.

The landlord testified that she has been to the rental unit once since the start of this tenancy. That was this past July and she only went to look at the washing machine. The house appeared to be in good condition on that visit although she was disappointed in the state of the yard. She and her husband only return to this community once a year, while they are on holiday.

Although there was a strongly worded e-mail exchange about what might happen on August 15, in fact, nothing happened.

The tenant has paid the rent for September and October. The landlord has not given the tenant a receipt for or any other written acknowledgement of those two payments.

Analysis

As set out in section 47(2) where rent is due on the first day of the month, the effective date of a 1 Month Notice to End Tenancy served partway through the month is the last day of the following month. Accordingly, the effective date of this notice to end tenancy was August 31, 2015. Pursuant to section 53 the effective date of the notice is automatically amended to the correct date.

As explained on the Residential Tenancy Branch web site, where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant in writing that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy."

This is usually accomplished by the landlord giving the tenant a receipt that states the rent payment is being "accepted for use and occupancy only".

It makes no difference whether the landlord accepted a rent payment offered by the tenant for that month, cashed a post-dated cheque that was already in the landlord's possession, or received a payment from a third party, such as social assistance, for the rent. If the rent has been accepted for the month after the tenancy was to end, the landlord must give the tenant a receipt that makes it clear the rent is being accepted for "use and occupancy only" or the tenancy will usually be reinstated.

By accepting the rent for September and October without providing the tenant with a receipt that clearly stated the payments were being accepted for use and occupancy only the landlord reinstated the tenancy. As a result, the 1 Month Notice to End Tenancy for Cause dated July 15, 2015 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

Even if the landlord had not reinstated the tenancy in this manner, it is doubtful whether I would have found that the landlord's evidence in support of the notice was sufficient. A tenant has to do more than just be frustrating or irritating or difficult before the tenancy will be ended on the grounds that the tenant has significantly interfered with or unreasonably disturbed the landlord. In this case, there is no evidence that the property has been put at significant risk.

Although there was a strongly worded exchange of e-mails about what might happen on August 15, in fact, the landlord has only been to the rental unit once and that was in compliance with the legislation. The tenant's application for orders limiting the landlord's right of entry and allowing the tenant to change the locks is dismissed.

There is no evidence that the swing set was permanently affixed to the land so I find that the swing set is a chattel not a fixture. The tenants bought a chattel and they may sell it or move it to their next residence as they choose.

The tenant now has access to the suite and the main shut-off valve for the house. No other order regarding a shut-off valve for the washing machine is necessary.

The evidence regarding the connection of the propane tank was minimal and this relief was not included in the application for dispute resolution. This claim is dismissed, with leave to re-apply if the tenant desires. The request for an order requiring the landlord to power wash the exterior of the unit is dismissed with leave to re-apply, for the same reasons.

Although it is not strictly necessary in order to resolve this particular dispute, in light of the fact that this tenancy will be continuing, I am going to make some additional findings and offer some observations that I hope will help the parties carry on in a more reasonable manner.

I find that the agreement between the parties was that the tenant would rent the upper level living unit only. He chose to pay the lower rent, did not try to access the suite, and made it clear in the hearing that he had no use for the space. The parties had an oral agreement that the landlord would not rent the suite to anyone else and she has complied with that agreement. However, the suite does belong to the landlord and she has the right to go and out of the suite as she wishes. This is the legal situation whether the addendum to the tenancy agreement states that or not.

With regard to yard maintenance, the obligations of landlords and tenants for cleaning and maintenance are set out in *Residential Tenancy Policy Guideline 1: Landlord and*

Tenant – Responsibility for Residential Premises. The Guideline sets out that a tenant who lives in a single family dwelling, or lives in a multi-family dwelling and has exclusive use of the yard, is responsible for routine yard maintenance including cutting the grass and clearing snow. The landlord is generally responsible for major projects such as tree cutting and tree pruning. These provisions apply to this tenancy whether they are repeated in an addendum to the tenancy agreement or not.

The tenant has continually put conditions on the manner in which the landlords may communicate with him – no telephone conversations, no text messages unless it is urgent, only talk to my lawyer, etc. The tenant says that he prefers to communicate by e-mail because the male landlord is aggressive and disrespectful in their conversations. However, his e-mails make it clear that since the beginning of this tenancy arbitration and/or litigation has been contemplated/anticipated/promised/threatened by the tenant and the landlord, and the tenant is very clear that he wants all communication in writing so that it is available as evidence, if required.

I do not see that the parties' communications have been enhanced or improved by limiting them to e-mail. After reading the e-mail exchanges my view is that both men are quick to threaten the other with legal action including eviction, law suits for defamation, arbitration, etc.; and that neither uses a particularly pleasant tone with the other. In addition, it appears that every issue is a major issue for the tenant.

This tenancy may continue for some time. The landlord can only end it if the tenant's behaviour meets the standard set out in the legislation and the tenant's evidence is that there are not many rental options in this community. In light of this fact, the parties may want to think about how they manage this relationship going forward.

The tenant also claimed the cost of registered mail, photocopying, and photographs. The *Act* does not allow an arbitrator to award any party the costs of preparing or serving their application for dispute resolution or evidence. This part of the tenant's claim is also dismissed.

Conclusion

a. The 1 Month Notice to End Tenancy for Cause dated July 15, 2015 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

b. All other claims by the tenant are dismissed, with or without leave to re-apply, as detailed above.

c. As the tenant was successful on his application to set aside the notice to end tenancy he is entitled to reimbursement of the fee he paid to file this application. Pursuant to section 72 the sum of $50.00 may be deducted from the next rent payment due to the landlord.

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: October 14, 2015

Residential Tenancy Branch