Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

This decision was corrected on January 08, 2016. For clarity, amendments have been crossed out and highlighted in bold and additions were underlined and printed in bold. A "decision on request for correction" has been rendered and provided to both parties.

Dispute Codes:

CNR, MNDC, OLC, RR, LAT, FF

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied:

- to cancel a Ten Day Notice to End Tenancy;
- for a monetary Order for money owed or compensation for damage or loss;
- for an Order requiring the Landlord to comply with the tenancy agreement or the *Residential Tenancy Act (Act*);
- for authority to reduce the rent;
- for authority to change the locks; and
- to recover the fee for filing this Application for Dispute Resolution.

At the outset of the hearing the Tenant withdrew the application to reduce the rent and for a monetary Order for $7,500.00, as those are issues that are the subject of a dispute resolution proceeding that is scheduled for April of 2016.

The Tenant stated that on October 09, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents submitted to the Residential Tenancy Branch were served to the Landlord, via registered mail, at the service address noted on the Application. The Tenants submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act;* however the Landlord did not appear at the hearing.

On November 23, 2015 the Tenants submitted an amended Application for Dispute Resolution and nine pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were served to the Landlord, via registered mail, on November 20, 2015. In the absence of evidence to the contrary I accept these

documents were served to the Landlord and they were accepted as evidence for these proceedings.

On December 02, 2015 the Tenants submitted three pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were not served to the Landlord. As these documents were not served to the Landlord, they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy be set aside?
Is there a need to issue an Order requiring the Landlord to comply with the tenancy agreement or the *Act?*
Should the Tenants be given authority to change the locks?

Background and Evidence

The Tenant stated that:

- the Tenants moved into the rental unit in June of 2014;
- the rental unit is a trailer on a city lot;
- the Tenants are the only people who live on the residential property;
- the Landlord and the Tenants entered into a fixed term tenancy agreement, the fixed term of which runs from May 31, 2015 to July 31, 2017;
- the Tenants agreed to pay monthly rent of $1,500.00;
- the Landlord agreed to reduce the rent from $1,500.00 to $750.00 for the period between August 01, 2014 and December 31, 2015;
- the rent was reduced in compensation for work the Tenants did at the residential property;
- on some occasions the Tenants paid $850.00 per month because the parties were sharing the cost of a disposal bin;
- the Tenants typically paid rent by “e-transfer”;
- on October 01, 2015 the Tenants paid rent by “e-transfer”;
- the Landlord refused the October 01, 2015 payment on October 05, 2015;
- on October 05, 2015 the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit, which declared that $1,500.00 in rent was due;
- on November 17, 2015 the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit which declared that $3,000.00 in rent was due; and

- on November 19, 2015 the Tenants paid rent of $3,000.00, which included full rent for October and November of 2015.

The Tenant submitted documentation from their financial institution which indicates:

- the Tenants paid $850.00 to the Landlord, via e-transfer, in April, June, August, and September of 2015and September of 2015; and
- the Tenants paid $750.00 to the Landlord, via e-transfer, on November 01, 2015, which was declined by the Landlord.

The Tenants are seeking authorization to change the locks to the rental unit. In support of this application the Tenant stated that:

- on September 01, 2015 the Landlord threatened to burn down the rental unit;
- as a result of this threat she fears the Landlord will harm her or her pets;
- the Landlord has never made any threats on any other occasion;
- she does not believe the Landlord has ever accessed the rental unit without lawful authority; and
- the rental unit is for sale and she fears the Landlord will allow prospective purchasers to view the rental unit without proper notice.

The Tenants submitted a letter from the Landlord, dated November 17, 2015, in which the Landlord informed the Tenants there will be “construction and maintenance” on the residential property during the week, commencing November 23, 2015 and ending December 18, 2015. The Tenants are seeking an Order prohibiting the Landlord from working on the residential property because:

- the Tenants have not been told what type of construction will be done;
- the Tenants believe the Landlord will not be building anything during this period because it is currently -10 degrees;
- the Tenants believe that the construction is simply an attempt to harass the female Tenant, who works shift work.

In the letter of November 17, 2015 the Landlord declares that items stored on the property, with the exception of two vehicles, will incur storage fees. The Tenants wish to know if the Landlord has the right to charge storage fees for items they store in their yard.

In the letter of November 17, 2015 the Landlord declares that any items stored on the property that do not comply with local bylaws will be towed away at the owner’s expense. The Tenant stated that they are storing a large trailer on the property, which contravenes local bylaws, and that they will be removing the trailer shortly.

Analysis

On the basis of the evidence presented by the Tenant and in the absence of evidence to the contrary, I find that the Tenants were only obligated to pay $750.00 in rent for

October of 2015 **and $750.00 in rent for November of 2015,** and that they did pay ~~**that amount of rent**~~ **$750.00 in rent for October**, by e-transfer, on October 01, 2015.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice. I find that the Landlord does not have the right to serve a Notice to End Tenancy, pursuant to section 46(1) of the *Act*, if the Landlord refuses to accept the rent that is offered. On the basis of the evidence submitted I find that the Landlord refused the rent payment for October on October 05, 2015, which is the same day he served the Tenants with the Ten Day Notice to End Tenancy. I therefore find that the Landlord did not have the right to serve the Ten Day Notice to End Tenancy on October 05, 2015 and I grant the Tenants' application to set aside this Notice to End Tenancy.

On the basis of the undisputed evidence, I find that the Tenants received a Ten Day Notice to End Tenancy for Unpaid Rent on November 17, 2015, which declared that $3,000.00 in rent was due, and that the Tenants paid $3,000.00 in rent on November 19, 2015. ~~**As the Tenants paid all the overdue rent within two days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent, I find the Notice has no effect, pursuant to section 46(4) of the *Act.***~~ **As the Tenants paid all the rent the Ten Day Notice to End Tenancy for Unpaid Rent declared was due within two days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent, I find the Notice has no effect, pursuant to section 46(4) of the *Act*".** As the Notice to End Tenancy that was served on November 17, 2015 has no effect, I grant the Tenants' application to set aside this Notice to End Tenancy.

I remind the Landlord and the Tenants they are both obligated to comply with section 29 of the *Act,* which reads:

> 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).

I find that there is no need to impose greater limits on the Landlord's right to enter the rental unit, because:

- there is no evidence the Landlord ever entered the rental unit without lawful authority;
- the Landlord advised the Tenants in a letter, dated November 17, 2015, that he will provide "24 hr notice" if he intends to enter the rental unit, which causes me to conclude that he intends to comply with section 29 of the *Act*;
- there is no evidence to suggest that the Landlord acted, or intend to act upon an threat that was made almost three months ago; and
- changing the locks to the rental unit is not likely to prevent the Landlord from committing arson if he is inclined to do so.

A Landlord has both a right and responsibility to maintain his residential property in accordance with section 32 of the *Act*. In the absence of evidence to corroborate the Tenants' belief that the proposed construction is intended to harass the Tenants, I cannot grant their application for an Order prohibiting the Landlord from working on the residential property.

I remind both the Landlord and the Tenants that the Tenants have the right to the quiet enjoyment of the rental unit and that the Tenants may be entitled to compensation for loss of quiet enjoyment if the duration and nature of the construction unreasonably disturbs the Tenants. I therefore strongly encourage the parties to agree on times/dates for construction/maintenance that minimizes the impact the work will have on the Tenants' work schedules.

Generally when a tenant rents a single-family dwelling when there are no other dwellings on the property, the tenant has the right to use the residential property, unless the tenancy agreement places limits on the use of the property. In the absence of evidence to show that the Tenants do not have full use of the residential property, I find that the Landlord does not have the right to charge storage fees for items stored on the property by the Tenants.

On the basis of the undisputed evidence, I find that the Tenants are storing a trailer on the residential complex that does not comply with local bylaws. I therefore find that the Landlord has the right to move the trailer, at the expense of the Tenants, if the trailer is not removed by December 31, 2015.

Conclusion

Both of the Ten Day Notices to End Tenancy for Unpaid Rent that are the subject of these proceedings have been set aside and this tenancy shall, therefore, continue until it is ended in accordance with the *Act*.

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: December 08, 2015
Corrected: January 08, 2016

Residential Tenancy Branch