Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OPC,MNR, MND, FF

Introduction

This matter dealt with an application by the Tenant for an Order to cancel a Notice to End a Tenancy for Cause dated January 23, 2016 and a monetary Order for compensation against the landlord. The landlord applied for an Order for Possession and for a Monetary Order for unpaid rent, for compensation for cleaning and repairs to the rental unit, and to recover the filing fee for this proceeding. Only the tenant attended the sixty three minute conference call hearing.

Preliminary Matters:

The tenant requested an adjournment so that he could amend his application to increase the amount claimed and produce more evidence in support thereof. An applicant must amend an application before a hearing so that the other party can be given proper notice of the amount claimed or it may be done by consent of the party at the hearing. A party may not obtain an adjournment to buttress their application. I find that the tenant failed to amend prior to the hearing, and because the opposing party was not present I have dismissed his application to adjourn to amend.

Service:

Based upon the tenant's testimony that he sent his application by registered mail to the landlords on January 29, 2016, I find that the landlords were deemed to have been served five days later on February 2, 2016.

Issues(s) to be Decided

Is this residential tenancy?
Is the tenant entitled to compensation and if so for much?
Is the Landlord entitled to compensation for cleaning and repairs and if so, how much?

Background and Evidence

The tenant testified that LN and JS rented a live in work space loft from the owner of the building. He testified that LN sublet her portion of that unit to him to on July 1, 2013. His monthly rent was $ 875.00 and $ 50.00 for Hydro. There was not any security deposit. He relied on a written tenancy agreement between LN (hereinafter referred to as the landlord) and himself.

The tenant testified that he knew the head lease was a commercial tenancy but that his dominant reason for renting the unit was to live there and do some photography and painting. The unit consisted of 1,200 square feet of which 200 square feet were used by the tenant occasionally for the production of his art. He admitted trying to run a business of selling art cards for a few weeks in 2016, but stated that was not a successful or ongoing enterprise.

The relationship between the landlord and the tenant broke down sometime in December of 2015 when the tenant testified that he received a letter from the landlord advising him that LN wished to retake possession of the unit in June of 2016. Shortly thereafter the tenant received a Notice to End the Tenancy for Cause dated January 22, 2016. The tenant moved out on February 1, 2016.

The tenant now claims for compensation. He claims that the landlord illegally evicted him as LN subsequently advised him that she planned to re-rent his unit for more money than he was paying. The tenant admitted he does not know if this actually occurred but thinks LN is not residing in the unit. He claims for compensation equivalent to two months rent as the landlord did not move into the unit.

The tenant also claims that the landlord stayed in his unit instead of a hotel from August 20-28 2015. He claims the sum of $ 300.00 for that accommodation. He claims the sum of $ 245.00 for some work he did for the landlord in disposing of some of her personal property.

Analysis

Residential Tenancy Policy Guideline 14 states as follows:

> **14. Type of Tenancy: Commercial or Residential**
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> **Generally**
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> Neither the *Residential Tenancy Act* nor the *Manufactured Home Park Tenancy Act* applies to a commercial tenancy. Commercial tenancies are usually those associated with a business operation like a store or an office. If an arbitrator determines that the tenancy in question in arbitration is a commercial one, the arbitrator will decline to proceed due to a lack of jurisdiction. For more information about an arbitrator's jurisdiction generally, see Policy Guideline 27 - "Jurisdiction."
> Sometimes a tenant will use a residence for business purposes or will live in a premises covered by a commercial tenancy agreement. The *Residential Tenancy Act* provides that the *Act* does not apply to "living accommodation included with premises that (i) are primarily occupied for business purposes, and (ii) are rented under a single agreement.
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> To determine whether the premises are primarily occupied for business purposes or not, an arbitrator will consider what the "predominant purpose" of the use of the premises is. Some factors used in that consideration are: relative square footage of the business use compared to the residential use, employee and client presence at the premises, and visible evidence of the business use being carried on at the premises.

I accept the tenant's evidence that he used the unit primarily for his residence, using only a small portion of unit occasionally for his art practice. I find that the unit was predominantly residential in purpose rather than commercial and accordingly that I have jurisdiction pursuant to the Residential Tenancy Act to determine these applications.

I find that any letter sent to the tenant by the landlord in the month of December 2015 requesting that he move out by June of 2016, was not a valid "notice" to end the tenancy in compliance with section 52 of the Act as it was not in the approved form.

Form and content of notice to end tenancy

> **52 In order to be effective, a notice to end a tenancy must** be in writing and must
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> (a) be signed and dated by the landlord or tenant giving the notice,
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> (b) give the address of the rental unit,
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> (c) state the effective date of the notice,
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> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
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> (e) when given by a landlord, **be in the approved form.**
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> (my emphasis added)

As the letter requesting that the tenant move out by June was not a valid notice, I find that the tenant was not obliged to move out and was not entitled to any compensation pursuant to section 51 of the Act.

Tenant's compensation: section 49 notice

> **51** (1) A tenant who receives a **notice to end a tenancy** under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
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> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
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> (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
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> (2) In addition to the amount payable under subsection (1), if
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> (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
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> (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
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> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. (my emphasis added)

I therefore have dismissed his claim for compensation amounting to two months rent.

The tenant moved out on February 1, 2016 after receiving a one month Notice to End the Tenancy for Cause. In doing so, he effectively ended the tenancy and accepted that the tenancy was over notwithstanding that he had disputed the one month Notice by filing this dispute.

I have already found that there was a landlord and tenant relationship between the parties as evidenced by a tenancy agreement referred to by the tenant. That relationship did not include his ability or right to claim for his accommodation of the landlord when she stayed at the unit instead of a hotel. Similarly in the absence of any written agreement by the parties, he was not entitled to claim against the landlord for work done for her by way of disposing if some of her property. He may have such claims against the landlord but they would be in the nature of employment, for work done or a benefit derived by the landlord outside the boundaries of a residential tenancy or permitted under the Residential Tenancy Act. Accordingly it would be incumbent

upon the tenant to seek compensation in another forum. I have therefore dismissed the remainder of the tenant's claims.

The landlord failed to attend the hearing and therefore I have dismissed all of her claims.

Conclusion

I have dismissed all the landlord and tenant's claims herein. There will not be any recovery by either party of their filing fees.

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: March 15, 2016

Residential Tenancy Branch