Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MNR, MNDC

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for; an Order of Possession for Cause pursuant to section 55; and a monetary order for unpaid rent, damage or loss pursuant to section 67. The tenant applied for cancellation of the landlords' 1 Month Notice to End Tenancy for Cause pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession? Are the landlords entitled to a monetary award for losses incurred as a result of this tenancy?

Background and Evidence

The tenancy within this "five-plex" residential premises began on February 15, 2016 with a monthly rental amount of $870.00 payable on the first of each month. The landlords bought the premises recently and, when the landlords purchased the premises, the tenant's rental unit was vacant. The tenant testified that the previous owner rented the unit to her and that she had arranged payment to be made to the previous owner.

The landlords entered into evidence a copy of the 1 Month Notice to End Tenancy for Cause. In that 1 Month Notice, requiring the tenant to end this tenancy by April 1, 2016, the landlords cited the following reasons for the issuance of the Notice:

- *Tenant has allowed an unreasonable number of occupants in the unit/site;*

- *Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and/or put the landlord's property at significant risk;*
- *Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and*
- *Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.*

The landlord (speaking on behalf of both landlords at the hearing) testified that she did not know how many people are living inside the rental unit but that it is more than just the tenant. The landlord testified that people come and go all of the time from the rental unit. She testified that she believes the tenant has an unauthorized roommate living in the unit full-time.

The landlord testified that she has witnessed the tenant's guests loitering around waiting for her to come home. She says she has had verbal complaints from the neighbours but not written complaints. She says that she has a security camera with footage reflecting her testimony but she did not submit that evidence for this hearing.

The landlord submitted that there is both a risk and inconvenience to the other occupants of the residential premises as well as a risk to the premises itself when people are using improper entranceways and loitering about. The tenant testified that she is allowed to have guests but that the landlord's description is exaggeration.

The landlords did not submit any evidence of illegal activity at this unit/by this tenant but suggests in her submissions that the tenants guests are trespassing.

The landlord submitted that the tenant had not 'technically" paid the security deposit because, even though she provided a security deposit to the previous landlord, the landlords have not received full rent from the tenant. The landlords submitted that the tenant has been asked to pay a pet damage deposit as they are now aware that she has a pet in the residence. The landlord testifying at this hearing provided undisputed sworn testimony that the tenant has refused to provide a pet damage deposit. The tenant testified that the previous owner did not require a pet damage deposit and was aware that she had a pet.

The landlord made submissions regarding the tenant's failure to pay rent however the landlords did not apply with respect to either unpaid rent or late rent.

Analysis of Preliminary Issue regarding Amendment for Non-payment of Rent

The landlord testified that she may have made an error on the dispute resolution application for this hearing. Residential Policy Guideline No. 11 provides that an arbitrator may allow an application to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in all of the circumstances. The guideline also states that, in determining whether it is reasonable in the circumstances to amend an application, an arbitrator must consider whether one party would be unfairly prejudiced by amending the notice. To avoid prejudice to a party, the applicant may amend the application without consent if the dispute resolution hearing has not yet commenced.

In this case, the landlords did not make an application to amend the notice prior to the hearing. In these circumstances, the matter at issue is the end of a tenancy. The guidelines and the *Act* indicate that a "notice ending a tenancy must be clear, unambiguous and unconditional". In this circumstance, the notice to end tenancy was not clear with respect to the inclusion of non-payment of rent or late payment of rent. To end a tenancy for non-payment of rent, a landlord is required to serve a tenant with a 10 Day Notice to End Tenancy for Unpaid Rent with an indication of the amount of rental arrears. As the landlords did not take this step, and issued a 1 Month Notice instead, I find that the landlords are not entitled to amend their application or Notice to End Tenancy or to rely on the ground of unpaid rent with respect to his application for an Order of Possession.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlords to justify the grounds to end the tenancy and the validity of the notice. On issuing a 1 Month Notice to End Tenancy as of April 1, 2016, the landlords claimed that;

- *Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.*
- *Tenant has allowed an unreasonable number of occupants in the unit/site.*
- *Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and/or put the landlord's property at significant risk.*

- *Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.*

I note that the landlords relied on the ground that the tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. Allegations on this ground require clear and decisive proof that the tenant or someone she has allowed on the property is engaged in illegal activity. The landlord did not present any evidence or detail, beyond the statement on the notice to end tenancy that the tenant or her guests have engaged in any form of illegal activity. Given that the tenant disputes this allegation and I have found that there was insufficient documentary evidence submitted with respect to this ground to end a tenancy, I will not consider this ground of the notice to end tenancy any further.

When a landlord relies on the ground that the tenant allowed an unreasonable number of occupants in the rental unit, the landlord is again required to provide proof to support an end to the tenancy. For this reason, while the landlord testified that the tenant has an excess of visiting guests, some who loiter or use improper ways to enter the property, the landlords submitted no evidence with respect to these occupants and/or guests. With respect to both this ground and the ground that the tenant or a person the tenant has permitted on the property has unreasonably disturbed another occupant in the premises, the landlord again provided testimony however the landlords provided no supporting documentary evidence in the form of written complaints, a log of information received regarding this tenant, security camera footage or any other information to support the landlords' claims with respect to the issues with this tenancy.

I find that there is insufficient evidence that the tenant interfered with or disturbed the landlord or other occupants. The standard with which to consider the end of a tenancy is that a landlord or another occupant has been ***unreasonably*** disturbed or ***significantly*** interfered with. It is required of the landlords that they show, on a balance of probabilities that the tenant has caused this level of interference or disturbance. I find that the landlord's testimony alone does not support this ground to end the tenancy. Beyond the landlord's testimony (disputed by the tenant), there is insufficient evidence submitted for this hearing to rely on in support of this claim.

The landlords also relied on the ground that the tenant has not paid a pet damage deposit. The tenant acknowledges that she has a pet and has not paid a pet damage deposit. However, she testified that she had not been formally advised of any obligation to pay a pet damage deposit. Section 18 of the *Act* specifies,

18 (1) A tenancy agreement may include terms or conditions doing either or both of the following:

(a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;

(b) governing a tenant's obligations in respect of keeping a pet on the residential property.

(2) If, after January 1, 2004, a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 *[limits on amount of deposits]* and 20 *[landlord prohibitions respecting deposits]*.

(3) This section is subject to the *Guide Dog and Service Dog Act*.

Further, for the information of both parties to this application, section 19 of the Act provides limits on deposit and section 20 prohibitions,

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Landlord prohibitions respecting deposits

20 A landlord must not do any of the following:

(a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;

(b) require or accept more than one security deposit in respect of a tenancy agreement;

(c) require a pet damage deposit at any time other than

(i) when the landlord and tenant enter into the tenancy agreement, or

> (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
>
> (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
>
> (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

In this case, the tenant provided undisputed testimony that she has had a pet for the entirety of her tenancy beginning in February 2016. She testified that the landlord (previous owner) was aware of her pet and did not require a deposit. She testified that she was not aware whether that the new owners/landlords were within their rights to ask for a pet damage deposit in the circumstances when they did so just prior to this hearing. She candidly testified that, while the landlords had spoken to her requesting a new pet damage deposit, she believed she was exempt based on the permission of the previous landlord.

I note that Residential Tenancy Policy Guideline No. 31 addresses pet damage deposits including the following,

> A landlord may require a pet damage deposit either when the tenant has a pet at the start of a tenancy or later, at the time a tenant acquires a pet and the landlord's required agreement is obtained
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> ... Sometimes a tenancy agreement might already provide that a tenant will pay a pet damage deposit on acquiring a pet, in which case, the deposit would be paid then.
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> If a tenancy agreement is silent about pets, then the landlord cannot require a pet damage deposit.

The tenant provided undisputed sworn testimony that she had a pet at the outset of this tenancy and was told that a pet deposit was not required. Given the new ownership, I find that is practically reasonable to allow the new landlords to obtain a pet damage

deposit and I find that the new landlords must require this pet damage deposit (within the limits of the *Act*) within 30 days after providing written notice to the tenant.

Furthermore, I note that the tenant is responsible for her rent. In these circumstances, the tenant is required to provide her subsidy provider with the new landlords' information for payment of rent as of the date that the landlords took ownership of the property. The landlords will be required to fill out the appropriate forms. The tenant must be aware that she is required, pursuant to section 26 of the *Act* to pay rent as follows,

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

I have no doubt that the change of ownership and this tenancy have caused confusion for both parties, primarily because of the previous owner's failure to consult the new owner's before re-renting the unit during the sale and for failing to communicate to the tenant the need to re-direct her rental payments. However, while I find that this confusion and the related difficulties are clear, I find that the landlords have not provided sufficient evidence and proof on a balance of probabilities to support any ground to end tenancy as indicated in their 1 Month Notice and Application.

Based on a lack of sufficient evidence to support any of the grounds to end tenancy provided on the 1 Month Notice, I dismiss the landlords' application.

Conclusion

I dismiss the landlords' application in its entirety.

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: May 04, 2016

Residential Tenancy Branch