



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47; and an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlord did not attend this hearing, although I waited until 9:44 am in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 am. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The tenant testified that he personally served the landlord with a copy of his Application for Dispute Resolution ("ADR") on May 5, 2016. Based on the sworn, undisputed testimony of the tenant, I find that the landlord was duly served with the tenant's ADR on May 5, 2016.

The tenant was unable to confirm whether he had received a formal and properly prepared Notice to End Tenancy. The tenant did not submit a copy of a Notice to End Tenancy. Given the lack of detail with respect to any Notice to End Tenancy, I dismiss the tenant's application to cancel the landlord's Notice to End Tenancy for Cause. The tenant may reapply if he receives and can produce a Notice to End Tenancy issued by the landlord to the tenant.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*?

Background and Evidence

The tenant provided minimal evidence regarding this tenancy. He testified that there is no written tenancy agreement. He testified that the landlord lives upstairs at the residential premises and that he lives downstairs with a roommate. He testified that he has applied for remedies previously through the Residential Tenancy Branch with respect to this landlord.

The tenant testified that he has been locked out of his residence on at least three occasions recently (in the month of June 2016) and that he is concerned that the landlord will continue to lock him out of his rental unit. The tenant testified, on each occasion that he has been locked

out, he has called the police. He did not submit police reports testifying that 'the police don't come in the middle of the night for that kind of thing'.

The tenant testified that the landlord refuses to accept his rent payments and that the landlord steals his mail. He testified that the landlord has attempted to increase the tenant's rent without written notice. The tenant testified that the landlord is stalking and threatening him. The tenant requests an order that the landlord comply with the *Act* with respect to; the tenant's access to the rental unit; the provision of proper notice to end tenancy; and comply with any requirements regarding rent increases.

Analysis

The tenant requests an order that the landlord comply with the *Act* with respect to; the tenant's access to the rental unit; the provision of proper notice to end tenancy; and ... While the tenant provided no documentary evidence in support of his application, he provided his sworn, undisputed testimony at this hearing. Furthermore, it is essential to a fair landlord-tenant rental system that both parties comply with their obligations under the *Act*.

The tenant provided no documentary evidence in support of his application and was unable to provide detailed testimony with respect to dates that he was locked out of his residence or when the landlord attempted to unduly raise the rent. Without further supporting evidence, I find that the tenant has provided insufficient evidence to prove his claim on a balance of probabilities.

Given the lack of detail with respect to his application for an order that the landlord comply with the *Act*, I also dismiss this portion of the tenant's application requesting an order that the landlord comply with the *Act*. However, the tenant may reapply if he is able to supply evidence supporting his claims against the landlord.

With respect to the tenant's claim and his testimony, I provide the following excerpts from the *Act* for the information of both parties. I have provided titles to represent the categories/issues that the tenant has raised.

BOTH PARTIES MUST COMPLY WITH THE ACT

This Act cannot be avoided

- 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Enforcing rights and obligations of landlords and tenants

- 6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.
- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

ACCESS TO THE RENTAL UNIT IS THE RIGHT OF A TENANT

Tenant's right of access protected

- 30** (1) A landlord must not unreasonably restrict access to residential property by
- (a) the tenant of a rental unit that is part of the residential property, or
 - (b) a person permitted on the residential property by that tenant.

Prohibitions on changes to locks and other access

- 31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.
- (1.1) A landlord must not change locks or other means of access to a rental unit unless

- (a) the tenant agrees to the change, and
- (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

A NOTICE TO END TENANCY MUST MEET ALL THE REQUIREMENTS OF THE ACT TO BE EFFECTIVE

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy [under one of the subsections]
- ...(c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

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

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

FOR EXAMPLE:

Landlord's notice: landlord's use of property

49 (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

...

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

...

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the *Strata Property Act*;
- (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

...

TIMING AND NOTICE OF RENT INCREASES

42 (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

...

Based on the claim of the tenant that the landlord has denied the tenant access to the rental unit, attempted to increase the rent and has made a variety of attempts to end the tenancy, I provide this information to ensure that both parties are aware of their rights and obligations with respect to these matters.

Conclusion

I dismiss the tenant's application in its entirety with leave to reapply.

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: June 06, 2016

Residential Tenancy Branch