



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Connaught Management Ltd. and CMS Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP, RPP, LRE, AAT, LAT, AS, FF, O

Introduction

This hearing dealt with an application by the tenant for a multitude of orders. Both parties appeared and gave affirmed testimony.

I went through the various orders sought with the tenant. The applications for orders limited the landlord's right of entry and allowing the tenant to change the locks on the rental unit flowed from something he saw at his neighbours; nothing he has experienced himself. The request for permission to sublet is in case he decides to get a roommate in the future; it is not a current issue. The tenant confirmed that he has not been denied access to the rental so an order allowing access to the rental unit or his guests is not required at this time. Accordingly, all of these applications were dismissed.

The tenant also applied for a repair order. The tenant agreed that the most important issue was whether the tenancy would continue or not. Accordingly, I dismissed their application for a repair order with leave to re-apply pursuant to Rules 2.3 and 6.2.

The hearing dealt with the tenant's application for orders setting aside a 1 Month Notice to End Tenancy for Cause and an order for return of personal property only.

The landlord had written evidence and proof of service of that evidence package on the tenant by registered mail. The records of Canada Post show that the item was mailed on November 3, well before the hearing, and was never picked up by the tenant. The landlord said that when the item was returned by Canada Post she put it in the tenant's mailbox on November 23. The tenant confirmed that he had found the item in his mailbox. As the evidence package was served in a manner permitted by the legislation it was accepted into evidence.

At the beginning of the hearing and again at the end the tenant said he had been recently served with a second 1 Month Notice to End Tenancy for Cause. He was advised on both occasions that each notice is a separate matter and that if he wants to

dispute the second notice he must do so within the time limit or he will be deemed to have accepted that the tenancy ends on the effective date of the notice.

Issue(s) to be Decided

- Does the landlord have cause, within the meaning of the *Residential Tenancy Act*, to end this tenancy?
- Should an order for return of personal property be made?

Background and Evidence

This tenancy commenced September 1, 2013 as a one year fixed term tenancy and has continued since the expiry of the term as a month-to-month tenancy. At the present time the monthly rent, which is due on the first day of the month, is \$970.00.

The rental unit is a three bedroom townhouse. There are 48 units in the complex. A parking spot is included with the rent. Parking is provided in an open-air parking lot. The surface of the parking lot is asphalt.

The tenant is a self-employed tile setter. His only vehicle is a 1998 half ton truck.

The issue is that the tenant's truck leaks oil.

The tenant testified that in mid-April the caretaker asked him about his truck and, specifically, when he was going to get it repaired. He replied that he didn't know because he didn't know when he would have the money for the repairs. She gave him permission to lay a rubber mat down to prevent the oil from dripping onto the asphalt. The tenant's friend testified that he was there during that conversation. He said the tenant offered to put down a mat; the caretaker said OK and walked away. The caretaker said she did not give this approval.

The tenant testified that when he returned home from work that day the mat was gone. He spoke to the maintenance man, the caretaker's husband, and was told he had removed it because the property owner would not like it being there. The maintenance man submitted a letter stating that this allegation was a complete lie.

The tenant said that it cost \$5.99 to buy the mat. This is the property that is the subject of the request for an order that personal property be returned by the landlord.

Starting April 20 and continuing throughout May the landlord wrote the tenant several letters asking him to clean up the oil that had leaked onto the parking spot and asking

him to park on the street until he had his truck repaired. The landlord's first letter also recommended a product for cleaning up the oil.

The caretaker's evidence is that the tenant did not comply with the requests.

The tenant explained that he keeps all of his tools in the back of his truck. The lock on the cap is broken and he does not want to park the truck on the street because he is afraid that his tools will be stolen. He also says that the maintenance man gave him permission to continue parking in the parking lot; an allegation the caretaker denies.

In June the landlord was having the parking lot repaired. They had the paving company dig out two sections of oil-stained asphalt and re-pave them. The landlord charged the tenant half the cost of this repair - \$105.00. The tenant has paid a portion of this charge and there is some dispute as to whether the tenant is to pay the balance or not. Once again the tenant says he has an agreement with the maintenance man to pay less.

On September 1 the tenant and the owner of the property had a conversation. The tenant said he was going to get his truck repaired and the owner agreed that the tenant could place a rubber mat under his truck until September 30. On September 7 the owner sent the tenant a letter saying that since the tenant had not complied with their agreement he was going ahead with the notice to end tenancy.

On September 27 the landlord issued and served a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice were:

- The tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property.
- Tenant has not done required repairs of damage to the unit/site.

The tenant testified that he has had his truck repaired twice but it still continues to leak oil. He did not file any evidence to support his claim of repairs such as invoices for the work done.

The landlord and the tenant both gave evidence that the tenant is using a mat but it keeps moving around so is not catching all of the oil. The tenant blames the caretaker and the maintenance man.

The tenant says that he has cleaned the parking spot several times throughout this period but the last time must have been particularly effective because the landlord noticed his efforts. The caretaker did confirm that the tenant did obtain a good result when he cleaned the parking spot in November.

Analysis

There is a very contentious relationship between the tenant and the caretaker and this particular dispute is only one part of that saga. The caretaker is frustrated by the tenant's lack of cooperation on this and other issues, and the tenant feels that is he being unfairly targeted by the caretaker.

First of all, with regard to the tenant's claim for the return of the rubber mat. This is an unsecured parking lot. Forty-seven other households and their visitors use this parking lot. There is no evidence that members of the public cannot access the parking lot. Anyone could have taken it.

The tenant's only evidence is that the maintenance man said he took it; the maintenance man submitted a letter saying he did not. There is no independent evidence to tip the balance of probabilities in the tenant's favour. Accordingly, this claim is dismissed.

The same conclusion must be drawn as to who is moving the mat around. Although the parties would like to blame the other, on the evidence before me it could be anyone.

With respect to the validity of the notice to end tenancy, there is no evidence of illegal activity by the tenant.

Section 47(g) allows a landlord to end a tenancy if the tenant does not repair damage to the rental unit or other residential property, as required by section 32, within a reasonable time. Section 32 requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The section also requires a tenant to repair damage to the rental unit or common areas caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

Although the source of the oil continues the damage it caused has been repaired twice in the past six months; once by the landlord and once by the tenant. I find that the tenant has made the necessary repairs and I grant his application. The 1 Month Notice to End Tenancy for Cause is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

The tenant has demonstrated that he has the means and the ability to keep this parking spot clean. He has an obligation to do so until he can get his truck repaired. In specific terms this means cleaning his parking spot to at least the standard he demonstrated in

November on a regular basis. Doing so is not only complying with his landlord's wishes but demonstrating consideration for his neighbours.

Conclusion

- a. The tenant's application for return of personal property is dismissed.
- b. The tenant's application for an order setting aside the 1 Month Notice to End Tenancy for Cause dated September 27, 2016 is granted. The notice is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.
- c. As the tenant was successful on his application he is entitled to reimbursement from the landlord of the \$100.00 fee he paid to file it. Pursuant to section 72(1), that amount may be withdrawn 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: December 08, 2016

Residential Tenancy Branch