Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

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 (the "1 Month Notice") pursuant to section 47; and
- recovery of the filing fees of this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance I attempted to confirm there were no issues with service. The tenant confirmed he had been served with the landlord's 1 Month Notice and evidence. I find that the landlord's 1 Month Notice and evidence were served in accordance with section 88 of the Act.

The landlord testified that he was served with the tenant's application for dispute resolution but was not served with all of the tenant's evidentiary materials. The tenant said that he had mailed the evidentiary materials to the landlord on or about April 28, 2017. I find that the tenant's application for dispute resolution was served in accordance with section 89 of the *Act*.

Rule 3.15 sets out that a respondent must receive evidence from the applicant not less than 7 days before the hearing. The tenant's evidence was not served within the timelines prescribed by rule 3.15 of the Rules and the landlord disputes receiving the evidence at all. A party to a dispute resolution hearing is entitled to know the case against him and must have a proper opportunity to respond to that case. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 grants me the discretion to determine whether to accept documentary evidence that does not meet the criteria for service, provided that it not unreasonably prejudice one party or result in a breach of the principles of natural justice. In this situation, as I find that the landlord was not served with the tenant's evidence in accordance with the rules, I advised the parties that I would only consider those pieces of evidence included in the tenant's package that the landlord confirmed having received on prior occasions and had an opportunity to review.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the 1 Month Notice?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The parties agreed on the following facts. This month-to-month tenancy began on March 1, 2015. The current monthly rent is $2,074.00, payable on the first. The tenant paid a security deposit of $1,000.00 at the start of the tenancy.

The landlord indicated on the 1 Month Notice that the tenant has put the landlord's property at significant risk. The landlord wrote that the tenant "has in the last 8 months done plumbing repairs in the house without my authorization." The landlord testified that he contacted his insurance company in early 2016 to ask how the tenant's repairs may affect the insurance policy. The landlord said that he was told that plumbing repairs would void the insurance policy. The landlord said that he emailed the tenant on February 12, 2016 to advise him of the comments from his insurer. The landlord said that the tenant has continued to make plumbing repairs to the rental unit and is therefore exposing the rental property to the risk of voiding the insurance policy.

The tenant testified that he is a licensed and bonded plumber by trade. He characterized the work he performed on the rental unit as minor adjustments and maintenance. The tenant said that the work included, tightening of some faucets, replacing a dripping shower cartridge, clearing blockages and stopping leaks. The tenant testified that there was no danger of the work causing additional damage to the rental unit. The tenant said that much of the work could have been performed by a layman with supplies available at a hardware store. The parties confirmed that the one major project undertaken, the replacement of the hot water tank, was authorized and paid for by the landlord. The tenant said that he considered the repairs minor work done to maintain the reasonable standards of the rental unit.

The tenant said that the landlord's email of February 12, 2016 primarily dealt with the issue of breeding and selling fish in the rental unit and only peripherally mentioned the issue of plumbing repairs. The tenant said that he does not know what information the landlord provided his insurer but believes that the minor repairs should not void an insurance policy.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. I accept the evidence of the parties that there have been a number of repairs and maintenance work performed by the tenant in the rental unit. However, I find the tenant's characterization of the work as "minor" to be more convincing. I accept the tenant's testimony that there was no serious danger of the work causing additional damage to the rental unit.

I find there is insufficient evidence to show that the tenant's actions put the rental property at risk of becoming uninsured. The landlord submitted into written evidence an email from the insurance agent dated February 12, 2016. The agent says that they are unable to accommodate a property where the tenants breed fish and coral for sale. There is no reference made to plumbing repairs. The landlord testified that he was told that plumbing repairs by the tenant would void the home insurance policy but I find that there is insufficient evidence to support this claim. I find the email of February 12, 2016 refers only to a tenant breeding fish and does not mention the effect of plumbing repairs on the insurance policy.

There is a spectrum of plumbing work that can be performed. On one end of the spectrum would be such projects as the replacement of the hot water tank. The parties agree that the water tank replacement was a larger project which required the landlord's authorization and the tenant charged the market rate for the work. On the other end of the spectrum would be minor, cosmetic work such as tightening faucets, fixing small leaks or replacing worn parts. It would be unreasonable to expect a tenant who is a licensed plumber to seek the prior approval of the landlord in every instance, just as it would be unreasonable to expect the landlord to attend and repair every minor fault that could just as easily be done by a lay tenant. I find that the repairs made by the tenant were in the scope of maintaining the standards of the rental unit and did not require the prior authorization or consent of the landlord. I do not find that the landlord's property was put at any significant risk due to the tenant's maintenance.

I do not find that individually or cumulatively the tenant's actions have given rise to cause to end this tenancy. Consequently, I allow the tenant's application and dismiss the 1 Month Notice.

As the tenant's application was successful, the tenant is entitled to recover the $100.00 filing fee for this application.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

As the tenant's application was successful, the tenant is entitled to recovery of the $100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his $100.00 filing fee by reducing his monthly rent by that amount on his next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of $100.00.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 5, 2017

Residential Tenancy Branch