Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, OLC, RP, PSF, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- an Order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- an Order that repairs be made pursuant to section 33;
- an Order that the landlord provide services or facilities required by the tenancy agreement; and
- recovery of the filing fee for 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 their sworn testimony, to make submissions, and to call witnesses. The corporate landlord was primarily represented by the building manager, LW (the "landlord").

As both parties were in attendance I confirmed service. The landlord testified that they posted the 1 Month Notice on the tenant's rental unit door on July 5, 2017. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the 1 Month Notice on July 8, 2017, three days after posting. The tenant testified that he filed his application for dispute resolution on July 16, 2017. The landlord confirmed receipt of the tenant's application package. I find that the tenant's application for dispute resolution package was served on the landlord in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to more time to file the application to dispute the landlord's 1 Month Notice? Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement? Should the landlord be ordered to make repairs to the rental unit? Should the landlord be ordered to provide services or facilities required by the tenancy agreement?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy began in April, 2013. The landlord characterizes the tenant as disrespectful and annoying. The landlord testified that the tenant is rude and disruptive in the rental building. He walks through the common halls with dirty footwear, doesn't close the rental unit windows causing damage to the sills and allows his clock radio to play early in the morning at 5am waking neighbors.

The landlord cited an instance where the tenant transported a replacement fridge that the landlord prepared from the common area to the rental unit without the landlord's permission or knowledge. The landlord states that the tenancy agreement provides in its Additional Terms that "heavy appliances/equipment of any kind may not be installed by the Tenant without written permission of the Landlord" and the tenant moving the fridge is a violation of this term.

In the copy of the 1 Month Notice submitted into written evidence the landlord indicates the following reasons for ending this tenancy:

- The tenant or a person permitted on the property by the tenant:
    - has significantly interfered with or unreasonably disturbed another occupant or the landlord;
    - has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has:
    - damaged the landlord's property
- The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time.

The tenant denies the landlord's allegations and says that he simply transported the replacement fridge to his rental unit. He said that he is aware of complaints but has not conducted himself in a manner that unreasonably disturbs other occupants of the building.

The tenant said that the rental unit requires specific repairs to the railing on the outside deck and the bifold doors. The landlord said that they have not been made aware of the specific repairs requested. The landlord said that they have attempted some repairs to issues in the past but the tenant has cancelled appointments with short notice so that the landlord is unable to make the requested repairs.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days of receipt, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. In the present case the landlord's 1 Month Notice is deemed served on July 8, 2017 and therefore the tenant has ten days, until July 18, 2017 to make an application.

While the tenant has applied for an extension of time to make an application pursuant to section 66 of the *Act* I find that the tenant has filed their application on July 16, 2017 within the prescribed time limit and an order is unnecessary. I decline to issue an order for an extension of the time limit to file an application for dispute resolution.

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.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. I find that the landlord has provided insufficient evidence in support of their notice. The landlord characterizes the tenant as annoying and disrespectful. I find that being disrespectful and an annoyance does not rise to the level of being a significant interference and disturbance of other occupants or the landlord. I find there is insufficient evidence to conclude that the tenant's behaviour and character reaches the level of disturbance to others that would give rise to a reason to end this tenancy. Similarly, on the basis of the evidence submitted by the landlord I do not find that there is a serious jeopardy to the health or safety of any of the rental building occupants or landlord. The landlord provided undisputed evidence that the tenant swore at him but I do not find there to be sufficient evidence that the tenant threatened the health or safety of the landlord or any other occupant. While verbal altercation may have been unpleasant I do not find it to be sufficient to conclude that the tenant was threatening anyone.

I find that the landlord has not provided sufficient evidence to show that the tenant is engaging in illegal activity that has or is likely to cause significant damage to the property. The parties referenced dents on the refrigerator door. I do not find transporting a refrigerator from the common area to the rental unit to be an illegal activity and in any event I find there is insufficient evidence of the damage that the landlord claims was caused to the refrigerator. Treading through the common areas with dirty work boots and leaving the windows open may cause increased wear on the building but are not illegal activities giving rise to a cause to end the tenancy.

The landlord submits that the tenant breached a material term of the tenancy agreement by putting the refrigerator in the rental unit. Residential Tenancy Policy Guideline 8 defines a material term as term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement. Based on the evidence I do not find that the prohibition on the tenant installing heavy appliances to be a material term of this tenancy. The clause referenced by the landlord is buried in the Additional Terms of the tenancy agreement. No evidence was submitted that this term was identified by either party as being a central facet of the tenancy agreement.

Furthermore, Policy Guideline 8 provides that in order to end a tenancy agreement for breach of a material term, the party alleging the breach must first inform the other party in writing that there is a problem that is believed to be a breach of a material term and provide a reasonable timeline to fix the problem. I find there is insufficient evidence to show that the landlord has taken the steps outlined in the Policy Guideline prior to issuing their 1 Month Notice.

In addition I find that moving a fridge into the kitchen of a rental unit and plugging it into an electric socket does not fit the reasonable definition of “installation of a heavy appliance”. I accept the undisputed evidence of the tenant that he merely brought the fridge into his rental unit and plugged it in order to activate it. I find that there is insufficient evidence that the tenant violated a clause of the tenancy agreement as placing an appliance does not meet the reasonable definition of installation.

I find that both cumulatively and individually the landlord has not provided sufficient evidence to support ending this tenancy. Accordingly, I find that the landlord has not met their onus and accept the tenant’s application to cancel the 1 Month Notice. The 1 Month Notice is cancelled and of no further force or effect. This tenancy will continue until ended in accordance with the *Act*.

I find that the tenant has provided insufficient evidence in regards to the portions of the application seeking repairs, services and the landlord’s compliance with the Act, regulations or tenancy agreement. The tenant provided vague testimony about repairs that he believes are necessary for the safety of the rental unit but I find that there is insufficient evidence to find that repairs are required. Consequently, I dismiss this portion of the tenant’s application with leave to reapply.

As the tenant’s application was partially successful the tenant is entitled to a monetary award to recover the filing fee for this application from the landlord.

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*.

The balance of the tenant's application is dismissed with leave to reapply.

As the tenant's application was partially 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: October 6, 2017

Residential Tenancy Branch