



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, LRE, MNDC, OLC, O

Introduction

On August 10, 2017, the Tenant submitted an Application for Dispute Resolution requesting the following:

- to dispute an illegal rent increase.
- to set conditions on the Landlord's right to enter the rental unit.
- for money owed or compensation for damage or loss under the *Residential Tenancy Act*, ("the Act") Regulation, or tenancy agreement.
- for the Landlord to comply with the Act

On October 4, 2017, The Tenant amended his application to include a request to cancel a 1 Month Notice To End Tenancy For Cause.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Tenant is seeking several orders. Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenant's application is whether or not the

tenancy is ending. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's application to cancel the 1 Month Notice, with leave to reapply for the other claims at a later time.

Issue to be Decided

- Is there cause to end the tenancy based on the 1 Month Notice to End Tenancy for Cause dated October 1, 2017?

Background and Evidence

The Landlord testified that he did not capture the terms of the tenancy agreement in writing.

The Tenant testified that during the tenancy the Landlord asked him to create a written tenancy agreement, but he did not.

The parties agreed that the tenancy started on December 1, 2015, as a month to month tenancy. The parties provided conflicting testimony on the amount of rent due each month. The Landlord testified that rent of \$1,100.00 is due on the last day of each month. The Tenant testified that rent in the amount of \$800.00 is due on or before the first day of each month.

The Tenant testified that the verbal agreement did not include a requirement to pay a security deposit. The Landlord testified that a security deposit is required and the Tenant did not pay it.

The Tenant provided documentary evidence consisting of copies of rent receipts received from the Landlord for the past six months showing that rent in the amount of \$800.00 was received by the Landlord.

The receipt for July 2017, states \$800.00 was received. The receipt includes the written words "RENT LATE Next time \$40.00 late charge will apply." The receipt is dated July 3, 2017.

The receipt for August 2017, states \$800.00 was received. The receipt includes the written words "rent \$1100.00 discounted \$300.00 Aug only.a \$40.00 fine will apply for late rent." The receipt indicates a new rental form and deposit to be filled out and paid by August 15.

The Landlord testified that he believed he had the authority to unilaterally increase the rent to be \$1,200.00 in August 2017. The Landlord testified that he never heard from the Tenant and it never got paid.

The Landlord issued the Tenant a 1 Month Notice To End Tenancy For Cause dated October 1, 2017 ("the 1 Month Notice").

The 1 Month Notice contains the following reasons for ending the tenancy:

Tenant is repeatedly late paying rent

Tenant or a person permitted on the property by the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord
- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord
- Put the Landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- Damage the Landlord's property
- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord
- Jeopardize a lawful right or interest of another occupant or the Landlord

The security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The Tenant disputed the 1 Month Notice by applying for Dispute Resolution within the required timeframe.

The burden to prove the cause to end a tenancy rests with the Landlord. With respect to the issuance of the 1 Month Notice, The Landlord provided the following testimony:

With respect to late payment of rent, the Landlord testified that the Tenant is repeatedly late paying the rent every two months. The Landlord testified that rent is due on the last day of the month.

The Landlord testified that the Tenant paid the rent late on the following days:

- May 1, 2017
- July 3, 2017
- August 1, 2017

In response, the Tenant testified that when the tenancy began the agreement was that rent was due by the first day of each month. The Tenant testified that the Landlord requested he pay the rent on the last day of each month and the Tenant tried to accommodate this. The Tenant acknowledged that the rent was paid late in July, 2017; however, he submitted that he tried to pay on July 2, 2017, but the Landlord was not available. The Tenant testified that the Landlord tried to get him to agree to new terms of the tenancy.

With respect to significant interference or an unreasonable disturbance the Landlord testified that the Tenant leaves his window open at the back of the unit and this puts the property at risk because the house is unsecure. The Landlord testified that the Tenant is presenting a fire risk because he leaves his baseboard heaters on.

The Tenant submitted that the window at the back of the unit can be opened 2 centimeters before it locks, and he often leaves them open for airflow.

The Tenant submitted that the baseboards do not always work, so he often uses another heater. He testified that the leaving the baseboards on and using the heater does not present a fire risk.

With respect to illegal activity the Landlord testified that the Tenant used threatening comments towards him by stating "you are going to get what is coming to you".

In response, the Tenant testified that he did not threaten the Landlord. He testified that he asked the Landlord to put his notice to end the tenancy into writing. He testified that the Landlord threatened to tow his vehicle from the property.

The Landlord testified that the Tenant did not pay the security deposit within 30 days. The Landlord testified that Tenant did not pay a deposit at the beginning of the tenancy; however, after his wife moved out he informed him that he now wanted the security deposit to be paid.

Analysis

Section 13 of the Act states that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Section 7 of the tenancy regulation states that a landlord may charge an administration fee of not more than \$25 for late payment of rent; if the tenancy agreement provides for that fee.

Section 14 of the Act states that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and Tenant agree to the amendment.

Residential Tenancy policy Guideline # 32 Illegal Activities provides the following:

The party alleging illegal activity has the burden of proving that the activity was illegal. Thus the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of procedure, a legible copy of the relevant statute or bylaw.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord breached section 13 of the Act by failing to prepare the tenancy agreement in writing.

The parties disagree on the term of tenancy regarding the date rent is due. The burden of proof rests with the applicant. The Landlord failed to record the terms of the tenancy in writing and there is insufficient evidence from the Landlord that a verbal agreement was reached with the Tenant that rent was required to be paid on the last day of the month. The Landlord cannot unilaterally change the terms of a tenancy without agreement from the Tenant. I prefer the evidence of the Tenant that the rent of \$800.00 was due on the first day of each month.

If the Landlord wants to increase the rent, he must issue a proper Notice of Rent Increase form and provide three months' notice to the Tenant. The amount of increase is prescribed by the tenancy Regulation and is 3.7% for 2017, and 4% for 2018.

I also find that that the Landlord failed to establish that the tenancy should end due to a failure to pay a security deposit. There is insufficient evidence from the Landlord that a security deposit was required or that he demanded payment throughout the tenancy. Even if the agreement at the start of the tenancy included a term to pay a security deposit, I find that the Landlord is estopped from demanding payment of the security deposit 20 months after the tenancy began.

I find that the Landlord cannot require the Tenant to pay a late rent fee of \$40.00. The amount demanded by the Landlord is more than the amount permitted by the Regulation.

The Landlords request to end the tenancy for repeated late payment of rent and for failure to pay a security deposit is dismissed.

I also find that the Landlord has failed to establish cause to end the tenancy for the remaining reasons within the 1 Month Notice:

Tenant or a person permitted on the property by the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord
- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord
- Put the Landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- Damage the Landlord's property
- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord
- Jeopardize a lawful right or interest of another occupant or the Landlord

I find that leaving the window slightly open, and leaving the baseboard heaters of the unit on is not significant interference and does not present serious jeopardy to Landlords health and safety.

There is insufficient evidence from the Landlord that the Tenant significantly interfered; unreasonably disturbed; or jeopardized the health or safety of the Landlord or another occupant.

With respect illegal activity, the Landlord did not provide sufficient evidence to support the allegation that the Tenant has engaged in illegal activity. I find that the context of the Tenant's comment that "you are going to get what is coming to you" was made in response to the Landlord's demands to unilaterally change the terms of the tenancy and the Landlord's failure to comply with his obligations under the Act.

The 1 Month Notice To End Tenancy For Cause dated October 1, 2017, is set aside.

The tenancy will continue until ended in accordance with the Act.

The Tenant has leave to reapply for dispute resolution to hear the claims that were severed from his application.

Conclusion

The Landlord provided insufficient evidence to support the reasons to end the tenancy.

The Tenant's application to cancel the 1 Month Notice To End Tenancy For Cause dated October 1, 2017, is granted.

The tenancy will continue until ended in accordance with the Act.

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: November 03, 2017

Residential Tenancy Branch