# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy dated September 16, 2008. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The parties agreed that on September 16, 2008 the tenant was served with a one-month notice to end tenancy. The notice alleges that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, has breached a material term of the tenancy and has not corrected the situation within a reasonable time after having received written notice to do so and has not complied with an order from a Dispute Resolution Officer within 30 days of having received the order. At the hearing the landlord acknowledged that the allegation that the tenant had not complied with an order from a Dispute Resolution Officer should not have been checked on the notice. The hearing proceeded to address only the remaining issues.

The landlord alleged that the tenant seriously jeopardized the health or safety or lawful right of the landlord when, on April 24, 2008, he made comments to the female building manager while signing his tenancy agreement. The landlord alleged that the tenant said to the manager, “You’re a cutie” and “If you step any closer, I’ll be forced to kiss you.” The tenant denied making these comments. The tenant testified that he was filling out an application to rent rather than signing the tenancy agreement at the time the comments were alleged to have been made and suggested that if the manager had been offended by the tenant’s comments, she could have refused his application. The

building manager testified that she did not respond to the tenant's comments because they made her uncomfortable, but reported the incident to the other building manager, who is her husband, as well as to the owner.

The landlord alleged that the tenant breached a material term of the tenancy when he refused to remove wire caging which the landlord claims was installed around the tenant's balcony. The landlord did not provide a copy of the tenancy agreement but read a section of the agreement which specifies that nothing may be hung from or affixed to balconies. The landlord provided a copy of a letter sent to the tenant on July 17 advising that the tenant had violated section 26 of the tenancy agreement and demanding that the tenant remove wire caging. The landlord alleged that the wire caging was still in place as at the date of the hearing. The tenant did not deny that he had wire caging around his balcony but provided photographs of other balconies in the residential property to which various items were affixed and suggested that the landlord was not enforcing this term of the tenancy with other tenants.

The landlord alleged that the tenant failed to transfer the BC Hydro account for the rental unit into his own name, violating section 11 of the tenancy agreement, which he claims is a material term of the tenancy. The tenant testified that he arranged for the account to be transferred at the beginning of the tenancy and that the bill sent to the landlord was in error and that the problem has been rectified.

The landlord alleged that the tenant breached section 17 of the tenancy agreement which provides that the tenant must not disturb, harass or annoy the landlord or other occupants. The landlord alleged that the tenant used verbally abusive language on several occasions.

Analysis

The landlord has alleged that the comments allegedly made by the tenant on April 24 jeopardized the health, safety or lawful right of the female building manager. No explanation was offered as to how these comments, if they were made, could have caused such jeopardy. Although the parties offered conflicting evidence with respect to whether those comments were made, I accept that the tenant made the comments

largely because this was reported to the male building manager and to the owner at the start of the tenancy when there would have been no reason for the female building manager to hold a grudge against the tenant or wish him any grief. I further accept that the comments were completely inappropriate. However, the fact that the landlord did not act on the comments until more than four months later leads me to believe that the landlord does not believe that the tenant posed a risk to the health, safety or lawful rights of the female building manager. I find that the landlord has failed to prove that this incident can form grounds to end the tenancy.

The landlord has alleged that the tenant breached three material terms of the tenancy. In order to successfully establish ground to end the tenancy on the basis that a material term of the tenancy has been breached, the landlord must prove that the tenant was given written notice of the breach and a reasonable opportunity to correct the breach and that the term is indeed a material term. Residential Tenancy Policy Guideline #8 provides that "A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement." While I accept that the prohibition against hanging items from and affixing items to the balcony is a term of the tenancy agreement, I find that it is not a material term as it is clear that trivial breaches of this term occur on a regular basis without the landlord ending the tenancy because of it. Although the breach of this term does not give the landlord the right to end the tenancy for cause, the tenant is reminded that he agreed to this term and that he is expected to comply with it. Should the tenant fail to comply with this term, the landlord may bring an application for dispute resolution for an order that the tenant comply with the terms of the tenancy agreement. If the tenant fails to comply with such an order, the landlord will have grounds to end the tenancy.

The landlord also alleged that the tenant failed to transfer the BC Hydro account to his name as required under section 11 of the tenancy agreement. At the hearing the landlord testified that he does not know whether the tenant had transferred the account yet, but in his evidence package the landlord submitted a statement signed by the building manager and dated August 18 in which he acknowledged that the tenant had taken responsibility for the Hydro account effective May 1, 2008. In that statement, the landlord suggested that the tenant was responsible for Hydro payments effective April

24, which the landlord alleges was the first day of the tenancy. The tenant testified that the tenancy began on May 1 and the landlord has not provided any evidence showing that the tenancy began on April 24 or any evidence showing that the tenant was given written notice to transfer the utilities effective April 24. I find that the tenant corrected the situation within a reasonable time and find that the landlord has failed to establish grounds to end the tenancy on this basis.

With respect to the landlord's allegation that the clause in the tenancy agreement prohibiting the tenant from disturbing, harassing or annoying other occupants or the landlord, I note that there is no evidence that the landlord ever gave the tenant a written notice advising that he was breaching what the landlord considered to be a material term of the tenancy. As the landlord has not proven that written notice was provided, I find that the landlord has failed to established grounds to end the tenancy on this basis.

I find that the landlord has failed to establish grounds to end this tenancy. I hereby set aside the notice dated September 16, 2008. As a result, this tenancy will continue.

As the tenant has been successful in his application, he is entitled to recover the $50.00 filing fee paid to bring this application. This sum may be deducted from future rent owed to the landlord. The tenant also sought to recover $7.50 as the cost of sending his application for dispute resolution to the landlord by registered mail. I do not have authority under the Act to award litigation-related costs other than the filing fee and I dismiss this claim.

Conclusion

The notice to end tenancy is set aside and the tenant is entitled to deduct $50.00 from future rent owed to the landlord.

Dated October 22, 2008.