Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC, LAT, RP, RPP, LAT, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated July 24, 2009 and effective August 31, 2009. The application was also to deal with the tenant's request for an order compelling the landlord to comply with the Act, an order that the landlord make repairs, an order that the landlord return the tenant's personal property, an order permitting the tenant to change the locks and an order to allow the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted by proving that the tenant or persons permitted on the property by the tenant violated the Act pursuant to section 47 by:
    - Significantly interfering with and or unreasonably disturbing other occupants or the landlord or;
    - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or;

- Engaged in illegal activity that is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

- Whether an order compelling the landlord to comply with the Act is warranted
- Whether the landlord should be ordered to make repairs
- Whether the landlord should be ordered to return the tenant's personal property
- Whether an order should be issued authorizing the tenant to change the locks
- Whether the tenant should be entitled to reduce the rent for repairs, services or facilities agreed upon but not provided

The burden of proof is on the landlord/respondent to justify that the Notice was warranted. The burden of proof is on the tenant to prove the remainder of the claims.

Background and Evidence: One-Month Notice for Cause

The first issue to be dealt with during the hearing was whether or not the One-Month Notice to end Tenancy for Cause should be cancelled. The burden of proof was on the landlord to justify that ending the tenancy for cause was warranted under the Act. Submitted into evidence was a copy of the One-Month Notice to End Tenancy dated July 24, 2009, copies of receipts, a copy of the tenancy agreement, copies of correspondence to and from the landlord , handwritten communications from the tenant to the landlord and others.

The landlord and tenant testified that the tenancy agreement was entered into in April 2009, although the tenant had resided on the premises rent-free prior to that, while employed working on the building. The rent was set at $650.00 and a deposit of $325.00 was paid.

The landlord testified that, after the tenancy commenced, the tenant seemed to become hostile to the landlord and apparently "had some kind of axe to grind". The landlord stated that it received complaints about the tenant yelling at other residents. The landlord testified that the tenant left an inappropriate telephone message containing foul language for an employee of the landlord. The landlord testified that the tenant had sent communications to the landlord detailing allegations regarding the unsatisfactory condition of the building, including mold contamination, renovation work being done without permits, structural problems and other complaints. The landlord testified that in these letters the tenant expressed his intention to contact past, present and future tenants, the chief building inspector, and to post information on the internet. Evidence submitted by the tenant contained copies of 5 letters written by the tenant dated July 21, 2009. Statements by the tenant contained in these letters included the following:

- *"I feel I should make All Present Tenants and All Future Tenants Fully Aware of All Health Concerns associated with the mould."*
- *"See enclosed letter # 2 to the (city) Chief Building Inspector."*
- "*I'm going to run an ad on the internet re: previous tenants with mould problems, and ensure the city shuts this place down & fix the Problems*".

The landlord testified that early in the tenancy the landlord had initially intended to employ the tenant as custodian but this employment offer was rescinded on July 21, 2009. A letter dated July 21, 2009 from the landlord to the tenant was in evidence stating: "*we hereby revoke any consideration on you continuing or starting as custodian of the above property effective immediately*."

The landlord testified that on July 24, 2009, the landlord issued a One-Month Notice to End Tenancy for Cause. The landlord contended that the tenant's conduct constituted significant interference and unreasonable disturbance of the landlord and other residents. The Notice also indicated that the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and engaged in illegal

activity that is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant testified that there was no significant interference with the landlord or other tenants. The tenant acknowledged that he did use foul language in a message to his supervisor. The tenant stated that he did not send any communications to the other residents, despite what his letters to the landlord implied. The tenant's position is that he was merely taking measures to ensure that the health and safety of all of the residents was being protected, given the serious problems in the building, including mold and electrical and plumbing work done without permits. The tenant stated that his conduct did not justify the landlord's action to end the tenancy through a One-Month Notice for Cause and that, in fact, the Notice was issued in reprisal against the tenant because he was merely trying to make sure that the building was safe. The tenant is seeking to have the Notice cancelled as being completely without merit.

Background and Evidence: Mutual Agreement to End Tenancy

The landlord testified that after the Notice was issued on July 24, 2009, the landlord received a written proposal from the tenant dated July 25, 2009. A copy of the proposal; was in evidence.

"I propose…

- *Return my Pet Deposit of $325.00, to me, and*
- *The 15 hours owing @ $15.00 per hour = $225.00 from XYZ Projects… on the afternoon of July 31/09, and I shall have ensured that this place is cleaned and ready to Vacate @ 6 pm July 31, 09.*

1. *Agree to these two simple requests and I shall cancel the following….*
    - *Note to All (address) Tenants re:*
    - *No Building Permits*
    - *No Electrical Inspections*

- *No Plumbing Inspections*
- *Mould in plentiful amounts and names phone numbers of those who have moved out with Health Problems.*

- *Structural concerns, and many other issues with the building at (address)….onto the internet.*

2. *Should you NOT agree to my 2 simple requests by Noon Monday the 27th of July, I shall proceed as planned to launch my complaints.*

    - *To All Tenants,*
    - *To Residential Tenancy Branch,*
    - *To the Internet*
    - *To City Hall – Chief Building Inspector – 'New Evidence'*

    and should your evidence be 'NON Substantive', I shall proceed with Civil Defamation of Character and call – Witnesses.

3. *Please slide your decision under my door or fax to ### before 12 Noon July 27, 09.*

4. *In closing….this case could also become an issue in a civil court and or become Public by going on T.V. …be realistic and I'll move out at 6 pm sharp with my $325.00 cash for the Pet Deposit in hand!*

    Sincerely (Tenant) (& signature)

The landlord testified that the tenant's written proposal was received by the landlord and on July 27, 2009, the landlord then issued a written acceptance of the tenant's proposal for a mutual agreement to end the tenancy. A copy of this document is in evidence and the landlord has stated, "*We hereby accept your proposal to vacate (Address) by 6:00 p.m., Friday July 31, 2009*". However, the tenant did not move out and instead chose to make an application on July 28, 2009 to cancel the One-Month Notice, which is the subject of this dispute. The landlord's position is that the tenancy was ended on the date mutually agreed upon by the parties and under the terms proposed by the tenant.

Because the tenant did not vacate pursuant to the mutual agreement to end the tenancy signed on July 27, 2009, the landlord has requested an Order of Possession.

The tenant testified that, while he did submit a signed proposal mutually agreeing to end the tenancy under specific terms, this document was written under "extreme duress". When asked to provide the details of the alleged duress, the tenant stated that he had misunderstood his rights and had mistakenly believed that the landlord could unilaterally end the tenancy in three days, thus creating a state of severe anxiety and stress for the tenant during which he wrote and signed the agreement proposing to end the tenancy by mutual consent. The tenant acknowledged that the landlord did accept all of the tenant's terms and signed in agreement in the letter dated July 27, 2009. The tenant testified that after the mutual agreement was endorsed by both parties, he then discovered information that changed his mind about agreeing to end the tenancy. The tenant's position is that he had then fully retracted the proposal for the Mutual Agreement to End Tenancy and instead decided to make an application to dispute the original One Month Notice to End Tenancy issued on July 24, 2009. The tenant was hopeful of preserving this tenancy and believes that he should be granted an order to cancel the Notice to End Tenancy for Cause.

Background and Evidence: Remaining Issues in the Tenant's Application

During the hearing, the tenant suddenly left and ceased to participate in the proceedings. The tenant ended his participation prior to any testimony or evidence being given in regards to the tenant's other requests including an order compelling the landlord to comply with the Act, an order that the landlord make repairs, an order that the landlord return the tenant's personal property, an order permitting the tenant to change the locks and an order to allow the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided.

The tenant's witness was not called as the tenant did not introduce any particular incident or issue under dispute during the hearing which required any the witness testimony.

Analysis

Section 44 of the Act outlines the circumstances by which a landlord can end the tenancy. This can occur only if the landlord gives notice to end the tenancy in accordance with section 46, landlord's notice for non-payment of rent, section 47, landlord's notice for cause, section 48, landlord's notice for end of employment, section 49, landlord's notice for landlord's use of property. A tenancy can also be ended by the tenant under section 45 of the Act. In addition, the parties can mutually agree to end a tenancy by consent if they do so in writing with a mutual agreement signed by both parties.

In this instance, I find that the landlord issued a One-Month Notice to End Tenancy for Cause under section 47 of the Act, on July 24, 2008. I find that, on July 25, 2009, after the One-Month Notice was issued, the tenant then proposed a Mutual Agreement to End the Tenancy with specific terms detailed in writing. The tenant gave the landlord a deadline of July 27, 2009 by which the landlord had to accept and endorse the terms consenting to the Mutual Agreement. I find that the landlord did sign its consent to the mutual agreement specifically stating that it accepted the tenant's terms and that this was done within the deadline given by the tenant to do so.

Section 44 (1)(c) states that a tenancy can end if the landlord and tenant agree in writing to end the tenancy. There is no doubt that both of these parties did sign an agreement to mutually end the tenancy and that this event occurred after the earlier Notice to End was issued by the landlord.

A Notice to End Tenancy may be withdrawn or waived only by the express or implied consent of both parties. I find that the One-Month Notice to End Tenancy for Cause that was issued on July 24, 2009 was clearly waived by these parties by virtue of the fact

that, subsequent to the issuing of the One-Month Notice, both the landlord and the tenant willingly entered into a Mutual Agreement to End Tenancy, that was completed on July 27, 2009. I find that the Mutual Agreement to End Tenancy replaced the One-Month Notice issued July 24, 2009 because both parties consented to the new agreement and its terms in writing and signed the agreement.

In regards to the tenant's submission that the written agreement signed on July 27, 2009 was later retracted by the tenant, I find that this could not occur. As mentioned earlier in this decision, a Notice or Agreement can only be withdrawn if both parties are in agreement and once it is in place can not be unilaterally withdrawn by only one of the parties. The signed consent of both participants would be required to validate a waiver.

In any case, I find that the landlord had acted in good faith in signing the agreement proposed by the tenant, and would therefore be unfairly prejudiced if the tenant was then permitted to proceed with challenging the original One-Month Notice.

Given the above, I find that it is not possible to grant the tenant's application to cancel the One-Month Notice since I have found as a fact that the parties themselves had already waived this Notice. Accordingly, I find that the tenant's application to cancel the Notice must be dismissed without leave.

Section 55 (1) of the Act states that, if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the Disputer Resolution Officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing: (a) the landlord makes an oral request for an order of possession; and (b) the director dismisses the tenant's application or upholds the landlord's notice. Accordingly, I find that the landlord is entitled to an Order of Possession.

Analysis: Other Claims in the Tenant's Application

I find that the other requests made by the tenant in the application including: an order compelling the landlord to comply with the Act, an order that the landlord make repairs,

an order that the landlord return the tenant's personal property, an order permitting the tenant to change the locks and an order to allow the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided, must be dismissed as no testimony was given in support of these matters. Therefore the tenant failed to meet the burden of proof necessary to substantiate granting any orders.

Conclusion

Based on the above, I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

September 2009 _____

Date of Decision

Dispute Resolution Officer