Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPT, DRI, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated July 11, 2011 with effective date of August 1, 2011. The tenant requested that the tenant's application be amended to dispute a One-Month Notice also issued by the landlord as well. The tenant applied for more time to dispute the Notice. In addition to the above, the tenant's application indicated the they are disputing an additional rent increase and requested an Order of Possession.

The hearing was also convened to hear the landlord's application seeking an Order of Possession and Monetary Order based on the Ten Day Notice to End Tenancy for Unpaid Rent. The landlord requested that the landlord's application be amended to also include enforcement of the One-Month Notice to End Tenancy for Cause that had been issued 3 days before the Ten Day Notice to End Tenancy for Unpaid Rent .

Both the tenant's and the landlord's request to have the One-Month Notice to End Tenancy for Cause included in this hearing were granted.

The parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

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

- Should the Ten-Day Notice to End Tenancy for Unpaid Rent be cancelled or enforced with an Order of Possession issued to the landlord?
- Should the One Month Notice to End Tenancy for Cause be cancelled or enforced with an Order of possession?
- Is the landlord entitled to a monetary order for rent or utilities owed?
- Did the landlord impose a noncompliant rent increase that should be cancelled?

Background and Evidence

Submitted into evidence was, a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 11, indicating that rental arrears of $1,200.00, a copy of the One Month Notice to End Tenancy for Cause dated July 8, 2011 with effective date of September 1, 2011 and written testimony. No copy of the tenancy agreement was in evidence.

The landlord testified the month-to-month tenancy began on November 1, 2010 with rent of $800.00 and security deposit of $400.00. The landlord testified that no written tenancy agreement was signed by the parties, but terms were negotiated verbally.

The landlord testified that there was a verbal term in the tenancy agreement that the tenant would be responsible to pay utilities including the fuel used in the oil tank. The landlord testified that there was a concern that when the tenancy ended in the future, the tenant would vacate without refilling the tank to the level it was at when the tenancy began or without reimbursing the landlord for fuel used. The landlord testified that the tenant refused to discuss the landlord's proposals about paying for the fuel as it was being used from the tank or in regular monthly increments. When the tenant failed to respond, the landlord then calculated the utilities based on an estimate of how much fuel has been used to date and issued a Ten Day Notice to End Tenancy for Unpaid Rent.

The tenant acknowledged that it was a term of the tenancy that the rent being paid did not include utilities and that the tenant would be responsible to refill the tank as required and, upon vacating, leave it with fuel at the same level it was at when the tenancy commenced.

With respect to the tenant's application disputing an additional rent increase, the tenant testified that the landlord had attempted to impose a written tenancy agreement several months after the tenancy started featuring a higher rent than what was agreed upon and the tenant refused to sign the agreement or pay the increase.

In regard to the One Month Notice to End Tenancy for Cause, the reasons shown included:

> (d) the tenant or a person permitted on the residential property by the tenant has
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> > (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
> >
> > (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(l) the tenant has not complied with an order of the director within 30 days of the later of the date the tenant receives the order; or that specified in the order for the tenant to comply with the order.

The landlord testified that the tenant had changed the lock without authorization and without providing the landlord with a key. The landlord stated that the tenant had refused entry to the landlord when verbally asked to permit access and would not discuss anything with the landlord. According to the landlord, the parties had a verbal agreement from the outset that the tenant would cut the grass on the property. However, the tenant failed to maintain the lawn causing damage to the grass by letting it grow too high. The landlord testified that there was a term in the verbal agreement that permitted the landlord's possessions to be stored in the basement and in one of the bedrooms in the rental property. However, according to the landlord, the tenant violated this agreement by removing the landlord's property stored in the bedroom and placing these items in the basement.

The tenant testified that the landlord should already have keys to the lock, but agreed to provide copies in any case. The tenant testified that there was a verbal agreement that the tenant would cut the lawn, which spans two acres, and this was to be done using a riding lawn-mower supplied by the landlord. However, the landlord did not provide the equipment as promised and the tenant did not cut the lawn.

The tenant testified that the landlord's possessions stored in the bedroom were merely moved to the basement. The tenant agreed that the landlord was entitled to use a portion of the basement as storage as part of the tenancy agreement.

The landlord argued that a tenant would be expected to maintain the lawn of a property for the tenant's sole use and that this responsibility should have been evident when the tenant agreed to rent the property. According to the landlord , although the entire lot is 2 acres, much of it is not grassland, being paved over , segregated into garden patches and a large area that used to be a pond. The landlord stated that the tenant's neglect resulted in a $40.00 fee to have the long grass cut down. The landlord testified that at

this time the lawn is in peril as the the cut grass must be raked up to avoid further damage to the lawn.

The tenant stated that he would be willing, with provision of basic equipment, to cut the grass immediately surrounding the residence, but that it was not possible to mow the entire 2 acres without the promised riding mower. The tenant is not willing to rake the grass cuttings left by the landlord's mowing contractor.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulation or the tenancy agreement. However, utilities that are required to be paid directly to the landlord as a specific term of the tenancy agreement, must be paid within 30 days of a written demand from the landlord or they become rental arrears.

I find that it has not been sufficiently proven by the landlord that a verbal term of the tenancy required the tenant to pay the landlord directly for the fuel being used. Through testimony from both parties it is clear that the alleged debt in question relates to fuel being used by the tenant from a tank that was filled by the landlord at the start of the tenancy. Notwithstanding the fact that there was no written tenancy agreement, I accept that the utilities, including this fuel, were not included in the rent. However, I find that this merely obligates the tenant to refill the tank as needed for the tenant's ongoing use and to ensure that, at the end of the tenancy, the tank is filled to the same level as it was at when the tenancy began.

Being that there is no established term in the tenancy agreement requiring the tenant to reimburse the landlord for fuel usage until the termination of the tenancy, I find that there was no valid basis under the Act to issue nor enforce a Ten Day Notice to End Tenancy for Unpaid Rent based on a debt that has yet to occur.

Therefore I find that the Ten Day Notice to End Tenancy for Unpaid Rent must be cancelled.

With respect to the One-Month Notice to End Tenancy for Cause, I find that the tenant's transgressions listed by the landlord, even if accepted as true, would not meet the criteria for ending the tenancy under section 47 of the Act.

However, I find that the tenant is not permitted under the Act to change the lock without authorization and must provide the landlord with a key, to which the tenant has already agreed.

I find that the tenant did not violate the Act by denying the landlord entry to the unit on a verbal request. Because section 29 of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry; or (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

> (i) the purpose for entering, which must be reasonable;
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> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Accordingly I find that the landlord is entitled to enter the rental unit with proper written notice and may inspect the premises on a monthly basis by giving notice in compliance with the Act.

With respect to the alleged agreement that the tenant maintain the entire lawn, I find that the responsibilities involved was based on unwritten tenancy terms that the two parties are now in disagreement with.

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement.

Section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement.* (My emphasis)

I find that the Act does not specifically assign responsibility onto either party to maintain the lawn. The matter of yard maintenance would be in a tenancy agreement.

However, there is a problem with the verbal term in this agreement relating to lawn care as it is being disputed with each party adamant that their own version was that mutually agreed upon at the beginning of the tenancy.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if

> (a) the term is inconsistent with this Act or the regulations,
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> (b) the term is unconscionable, or
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> **(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.** (my emphasis)

Given the above, I find that the tenancy terms with respect to lawn maintenance are not clear.

Section 62 of the Act gives the dispute resolution officer authority to determine

> (a) disputes in relation to which the director has accepted an application for dispute resolution, and
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> (b) any matters related to that dispute that arise under the Act or a tenancy agreement.

The dispute resolution officer may make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act. And may make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with theAct, the regulations or a tenancy agreement .

Therefore I find that the tenancy terms relating to lawn maintenance are as follows:

> 1)The parties will share equally in the cost of hiring a professional lawn cutter from a recognized firm to mow the lawn as arranged by the tenant. Upon presentation of the invoice, each will forward a cheque for half the amount to the contractor doing the work.
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> 2) In the alternative, the landlord will supply the tenant with adequate equipment, such as a rider mower, and the tenant will perform the grass cutting and supply the fuel.
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> 3) Regardless of which of the two options chosen by the parties, should the grass area become significantly overgrown in future, the landlord is at liberty to have the lawn cut by a professional and present the invoice to the tenant to pay half. If the tenant does not pay his share at that time, the landlord is at liberty to make an application for dispute resolution seeking monetary compensation for the tenant's share of the cost.

With respect to the landlord's right to use part of the tenant's rental unit for storage of possessions belonging to the landlord, I find that the tenant agreed that the landlord was entitled to use a portion of the basement as storage as part of the tenancy agreement. The landlord is still required to give proper written notice for access to the premises for this purpose and is not permitted to expand the area now being utilized.

Conclusion

Given the above, I hereby order that the Ten Day Notice to End Tenancy for Unpaid Rent dated July 11, 2011 is cancelled of no force nor effect.

Based on the evidence and testimony, I hereby order that the One-Month Notice to End Tenancy for Cause dated July 8, 2011 is cancelled and of no force nor effect.

I hereby order that the parties comply with section 29 of the Act with respect to permitting or requesting access and that the tenant provide the landlord with a key.

I hereby order that both parties are equally responsible for the lawn maintenance, by either each paying half of the cost of mowing according to an invoice from a professional or by making a mutually agreeable arrangement between them with the landlord supplying the suitable equipment and the tenant providing the labour and the fuel.

The remainder of the tenant's and the landlord's applications are dismissed without leave. Neither party is entitled to be reimbursed for the cost of their applications.

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: August 17, 2011.

Residential Tenancy Branch