Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC, LRE, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause issued by the landlord. In addition to the above, the tenant's application indicated that the tenant is seeking an order to restrict the landlord's access. The hearing was also convened to hear the landlord's application seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause that had been issued on June 22, 2012. The parties appeared and gave testimony during the conference call.

Preliminary matter: Evidence

The tenant had initiated a request that the matter be adjourned as the time-lines for service of evidence made the service difficult and allowed no time before the hearing for either party to properly respond to the evidence of the other party. Pursuant to the Residential Tenancy Rules of Procedure, Rule 3.1, all evidence must also be served on the respondent and rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent as required, the Dispute Resolution Officer must apply Rule 11.6 which deals with the consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance. This rule permits the Dispute Resolution Officer to adjourn a dispute resolution proceeding to receive evidence that a party states was submitted to the Residential Tenancy Branch but was not received by the Dispute Resolution Officer before the dispute resolution proceeding.

In this instance the tenant filed for dispute resolution on July 9, 2012 and served the evidence on July 12, 2012, deemed to be served in 5 days, which would be July 17, 2012. The landlord applied for dispute resolution on July 16, 2012 and had sent all evidence by July 18, 2012, deemed served in 5 days, which would be July 23, 2012. It is clear that the available response time for the parties to respond to the evidence was

very restricted and in fact, the tenant was prevented from rebutting the landlord's evidence by virtue of the fact that any response, even if sent immediately on July 23, 2012 , would be deemed to have arrived on July 28, 2012, after the hearing had been held.

A discussion ensued and the parties agreed to proceed with the hearing, despite the above concerns.

Issue(s) to be Decided

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

- Should the One Month Notice to End Tenancy for Cause be cancelled?
- Is the tenant entitled to an order restricting landlord's access?

Background and Evidence

Submitted into evidence was, a binder containing relevant documents submitted by the landlord, including written statement, a copy of the tenancy agreement, copies of communications, a copy of the One Month Notice to End Tenancy for Cause, copies of reports, copies of receipts , a chronology of events and some documents relating to the history of the tenancy. The tenant had submitted evidence that included written testimony, copies of communications, copies of previous dispute resolution decisions, and photos.

The tenancy began in July 2007and the rent was stated as being approximately $1,860.00 or $2,098.00 including utilities that are paid to the landlord.

The One Month Notice to End Tenancy for Cause indicated that:

> (d) the tenant or a person permitted on the residential property by the tenant has
>
> > (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
> >
> > (iii) put the landlord's property at significant risk
>
> (h) the tenant
>
> > (i) has failed to comply with a material term, and
> >
> > (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Significant Interference Or Unreasonable Disturbance

The landlord testified that during the landlord's inspections of the rental unit, none of which exceeded 45 minutes, the tenant had blocked the landlord from inspecting certain areas, acted in an aggressive and menacing manner, used insulting language against the landlord and people who accompanied her during the inspection, got in the landlord's way, took photos, threatened to call police and generally acted in an uncooperative manner.

As an example of the above conduct the landlord pointed out that the tenant had blocked the landlord's inspection not allowing her to open curtains so that she could view the premises properly and refused to let the landlord physically examine certain sections of the carpet and areas of some rooms. The landlord testified that the tenant also closely followed her around making her feel uncomfortable or stood by front of areas which the landlord wanted to access.

With respect to the tenant's aggression, the landlord acknowledged that she was not physically assaulted nor were any specific threats of bodily harm issued by either tenant. However the landlord stated that she felt very much as risk and for this reason was accompanied by at least one other person who could serve as witness, should any harm come to her.

The landlord testified that the tenant often used insulting language that could not be repeated and at times it appeared that the tenant was contemplating striking her. The landlord testified that she also brought a voice recorder along during the inspection and this was done in order to influence the tenant not to become violent.

The landlord also testified that the tenant had significantly interfered with her attempt to enter the yard to complete a repair after giving the tenant ample notice requesting access.

The landlord's position is that the tenant's conduct constituted significant interference and unreasonable disturbance that would support the One Month Notice to End Tenancy for Cause and justify the ending of this tenancy.

The tenant acknowledged that, during the inspection, they did attempt to prevent the landlord from touching any of their household contents including pulling back the curtains and they also refused to lift the carpets on request.

The tenant stated that they object to the landlord's intensive and repeated examination of their home and the confrontational intrusive nature of these inspections. The tenant testified that this included the landlord's insistence on sending them detailed reports and communications afterwards. The tenant testified that the landlord's practice of bringing a variety of people through their home, taking photos, criticizing their upkeep of the

premises and imposing outrageous demands unreasonably interfered with the tenant's right to quiet enjoyment and caused the tenant a significant amount of stress, particularly for her husband who is over 80 years old and not in good health. The tenant testified that the landlord is intentionally harassing the tenant through repeated inspections and issuing unsupportable Notices to End Tenancy for Cause.

With respect to the landlord's fear of harm, the tenant stated that no threats have ever been made against the landlord and there has never been a physical confrontation of any kind. The tenant acknowledged that some of her comments may have been sarcastic, but it was not their practice to use foul language or threats of violence.

The tenant agreed that the landlord was denied entry to the yard on one occasion , but pointed out that the landlord had not provided proper written notice served on the tenant in accordance with the Act.

The tenant's position was that they did not significantly interfere with nor unreasonably disturb the landlord.

Put Property at Significant Risk

The landlord testified that the tenant had put the landlord's property at significant risk by failing to report damage to the unit and leaving it up to the landlord to find out problems later on during her inspections. The landlord testified that the tenant also refused to give the landlord any details when asked about the history or duration of repair issues. In addition to the above, according to the landlord, the presence of an unlicensed car in the driveway put the property at risk.

An example of a repair issue that the landlord felt was the tenant's responsibility to report was that water was found around the furnace and leaking water pipes from the pool were discovered in the basement. The landlord also pointed out that the tenant did not immediately report roof tiles found on the ground that evidently came from storm damage to the roof. The landlord stated that there was an expectation that the tenant would provide as much information as possible about any condition issues that arise and report problems in a timely manner.

The landlord was concerned about damage being caused by the tenant's dogs. The landlord testified that during an inspection stains were found on the deck that appeared to indicate that the tenant was permitting their dog to urinate on the deck.

The landlord testified that the above also constituted just cause to terminate this tenancy.

The tenant testified that they have reported numerous deficiencies with the rental unit and alerted the landlord to the need for repairs on many occasions. The tenant testified that this is fully documented in the evidence. The tenant testified that the landlord consistently neglects to address their requests for repairs. With respect to the leaking from the pool, the tenant stated that the issue was found to be nothing more than an old worn out pool filter. The tenant stated that they did not consider the state of the landlord's roof to be their responsibility to monitor, however, they did alert the landlord about the roof tiles, that were found by a neighbor.

The tenant testified that the car in the driveway posed absolutely no risk to the landlord's property and testified that it was insured and licensed for storage purposes.

The tenant also denied the landlord's allegation that their dogs were urinating on the deck. The tenant's position is that none of the above factors nor anything else with respect to their tenancy is placing the landlord's property at significant risk.

Failure To Comply With A Material Term

The landlord testified that the material term in question relates to an agreement between the parties included as a term in the tenancy agreement, in which the tenant agreed to take on responsibility to ensure pool maintenance in exchange for reduced rent.

Section 62 (1) of the Act grants a Dispute Resolution Officer the authority to determine any matters related to disputes that arise under the Act or a tenancy agreement and section 62 (2) allows a Dispute Resolution Officer to make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act and to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement.

Section 59(5) states that a dispute resolution officer may refuse to accept an application for dispute resolution if, in his or her opinion, the application does not disclose a dispute that may be determined under the Act.

I find that, although the tenancy agreement made brief reference to a requirement that the tenant perform regular maintenance of the pool and garden, I find that this term is limited by the Act such that it would only obligate the tenant to basic responsibilities, anything beyond which would be outside the scope of the Residential Tenancy Act .

I find that any contract between the parties that requires the tenant to engage in labour for compensation, is not part of a landlord/tenant relationship under the Act and

therefore would clearly be beyond my authority to determine under the Act. In any case, I do not find that pool maintenance by the tenant can be considered a material term of the tenancy. Given the above, I decline jurisdiction on the basis that the pool maintenance contract in question, if it exists at all, is a distinct and separate agreement that cannot be integrated as part of a compliant tenancy agreement. While these parties are certainly free to devise contracts as they see fit to do, disputes over those contracts would need to be dealt with in another forum.

Analysis

The burden of proof is on the landlord to show that the One-Month Notice to End Tenancy for Cause was warranted. With respect to the Notice, I find that the tenant's alleged 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. As I accepted the landlord's evidence as stated, there was no need to call the landlord's witness to testify.

In regard to the issue of significant interference, I find that the landlord was not prevented from conducting a thorough inspection of the rental unit. This is verified by the documentary evidence submitted by the landlord that included comprehensive and detailed reports of the inspections.

I find that, if the landlord genuinely felt threatened by the tenant as claimed, the landlord has failed to furnish sufficient tangible evidence that there was any genuine basis for this perception I do find that the tenant was likely less than civil during the inspection process. However, this is not a violation of any particular section of the Act.

I accept the tenant's testimony that their efforts to restrict the landlord from going beyond what they felt an inspection should validly entail, cannot be considered as interference on their part.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance; (my emphasis)
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 (1) of the Act provides that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (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; (my emphasis)
> >
> > (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;

To qualify as a "*reasonable*" purpose under section 29(1)(b)(i) of the Act, I find that the landlord has a statutory obligation to ensure that the inspection process does not compromise the tenant's right under section 28 (a) and 28 (b) to reasonable privacy and freedom from unreasonable disturbance.

I find that a reasonable purpose for a periodic inspection during the tenancy would be limited to a rudimentary examination by the landlord to determine the following:

- general repair needs,
- integrity of the structure,
- working functionality of fixtures,
- state of the mechanical equipment in the rental unit
- any potential issues that would tangibly compromise the building itself or violate local bylaws
- aneed for further investigation by and expert in the appropriate field.

I find that, except as it impacts the above factors, the landlord has no right to use an inspection to evaluate, or attempt to control, the tenant's lifestyle, cleanliness, decor or private household practices.

I find that the landlord is correct in pointing out that section 32(2) of the Act does require a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

However I find that any standard for health, cleanliness and sanitation is considered to be reasonable and entirely up to the tenant to choose unless the premises are maintained in a manner that compromises the landlord's reciprocal statutory obligation under section 32(1). This section of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

I find that, under the Act, the landlord is not entitled to merely impose its own subjective housekeeping standards on the tenant during the tenancy.

Notwithstanding the above, at the end of the tenancy the landlord can rely on section 37(2) of the Act which states that, on vacating a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the tenant's failure to do so, may create a liability for the tenant and entitle the landlord to compensation in damages. However, this would be applicable at the end of the tenancy.

I accept the tenant's testimony that the landlord's inspection process was considered by them to be unnecessarily intrusive, because the landlord's action in examining inappropriate factors, bringing additional individuals through, using a camera and recording devices and inundating the tenant with written communications and reports of deficiencies afterwards.

In any case, I find that the tenant's alleged interference with the inspection process, as described by the landlord, does not come close to meeting the necessary threshold for ending this tenancy under section 47 of the Act.

In regard to the landlord's contention that the tenant had put the landlord's property at significant risk by failing to report some problems, I find that there is an expectation under section 32(2) that a tenant will promptly report the need for repairs, particularly if the situation could possibly escalate the deterioration of the rental unit or building structure. If a matter is urgent, the expectation is that the problem should be reported immediately. I find that general condition issues with the building would otherwise be scrutinized and discovered by the landlord through a regular maintenance and inspection regime.

In this instance, I do not find that the tenant's failure to immediately report the pool filter problem or the stray roofing tiles has placed the landlord's property at significant risk. I find that the tenant likely relied on the fact that the landlord would be conducting an inspection, at which time the above issues could be discussed. Moreover, I find that the tenant did report most repair issues, that developed in the unit, in a timely fashion as they arose.

I find that the landlord did not provide sufficient evidence to prove that the existence of an unused car in the driveway constituted a significant risk to the property, nor did the landlord successfully establish that the tenant's dogs posed a risk to the building by urinating on the deck.

With respect to the tenant's application and their request for an order to restrict the landlord's access, I find that the landlord is already restricted by sections 28 and 29 of the Act and an order to follow the Act would be redundant. I find that, provided the landlord does comply with these sections in future, there is no need to impose further restrictions. However, should the landlord continue to violate the tenant's rights under these or other sections of the Act, the tenant is always at liberty to file an application for dispute resolution seeking a remedy.

With respect to the tenant's allegations of harassment that were contained in the tenant's application and brought forth in the tenant's testimony during the hearing, these allegations were not considered at this hearing as the matter before me during the proceedings pertained solely to whether the One-Month Notice to End Tenancy for Cause should be cancelled or enforced. Only relevant evidence was used in the determination. Again, the tenant is at liberty to pursue other tenancy disputes through a separate application in future.

Conclusion

Based on the evidence and testimony, I hereby order that the One-Month Notice to End Tenancy for Cause dated June 22, 2012 is cancelled and of no force nor effect.

The landlord's application is hereby dismissed.

As the tenants have been successful in their application, I find that they are entitled to be reimbursed the $50.00 cost of the application and I order that they deduct this amount from their next payment of rent to the landlord.

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: July 26, 2012.

Residential Tenancy Branch