Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenants to cancel a One Month Notice to End Tenancy for Cause dated July 6, 2012.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on April 15, 2012 and expires on May 1, 2013. Rent is $1,250.00 per month. The rental unit is a single family dwelling. On July 6, 2012 the Landlord served the Tenants with a One Month Notice to End Tenancy for Cause dated July 6, 2012 by posting it to the rental unit door. The grounds selected on the 2nd page of the Notice were that,

- The 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.

The Landlord said he gave the Tenants the Notice because he received two fines from the municipality due to the fire department attending the rental property on two separate occasions in response to a false fire alarm. The Landlord said he paid these fines totalling $166.00 and admitted that the parents of the Tenant, J.H., paid him $162.00 in reimbursement of that amount. The Landlord also said he received a warning from the municipality that the property was in contravention of an Unsightly Premises bylaw because the grass was overgrown. The Landlord said the Tenant refuses to cut the grass and in order to avoid further fines from the municipality he has had to cut it. The Landlord argued that the Tenant was responsible for cutting the grass.

The Parties agree that approximately one week ago, the Tenant, J.H., vacated the rental property. The Landlord claims that since that time, the Tenant has taken in new tenants without his consent and that as a result, his insurance would be invalid. The Landlord also claimed that approximately one week ago when he attended the rental property, the parents of J.H. pointed out marijuana plants growing in the yard. The Landlord further argued that the Tenant borrowed an air compressor and nail gun from him valued at approximately $1,000.00 to build a fence on the rental property and has failed to return them.

The Tenant claimed that one of the fines for a false fire alarm was not his fault but occurred as a result of work being done in an adjoining property by a technician from the alarm company. The Tenant said he was reimbursed for this fine from the alarm company and that the Landlord was reimbursed for all but $4.00 of the two fines. The Tenant denied that he received a copy of the notice sent by the municipality for the overgrown grass. The Tenant argued that it was the Landlord's responsibility to cut the grass but admitted that he told the Landlord at the beginning of the tenancy that he would cut the grass if the Landlord provided him with a lawn mower and weed wacker. The Tenant said the Landlord provided him with an old, broken down lawnmower that didn't work and that was inadequate to maintain the large, corner lot yard.

The Tenant denied that he has permitted anyone else to reside in the rental unit but admitted that he had two potential room mates in mind in order to share expenses. The Tenant said he asked the Landlord to meet with these people to satisfy himself that they were responsible but he refused to do so. The Tenant denied that he had marijuana plants growing on the rental property. The Tenant claimed that the Landlord's air compressor and nail gun were stored in an unsecured room adjacent to the garage, that they were stolen and that he filed a report with the RCMP. The Tenant argued that the real reason the Landlord gave him the One Month Notice was because the Landlord wanted him to pay rent on the 1st of the month instead of the 15th as set out in the tenancy agreement and he refused to do so.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that in the first three months of the tenancy, the Landlord received two fines and a by-law violation notice from the municipality regarding an act or neglect of the Tenants. I also find on a balance of probabilities that the first false fire alarm was not due to an act or neglect of the Tenants. I further find that the Landlord was reimbursed all but $4.00

for the fines but that in order to avoid further fines the Landlord has had to attend the rental property to cut the grass on behalf of the Tenants.

The Tenants argued that the Landlord was responsible for cutting the grass because the tenancy agreement did not require them to do so. However, I find that this is not the case. Section 32(2) of the Act places a responsibility on 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." RTB Policy Guideline #1 at p. 7 says "generally the Tenant who lives in a single family dwelling is responsible for routine yard maintenance which includes cutting grass and clearing snow. The Tenant is [also] responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds." ***Consequently, I find that the Tenant is responsible under the Act for cutting the grass and the Landlord has no obligation to supply him with the tools to do so.***

As a result, I find that one of the false fire alarms and the by-law violation notice for the unsightly property were issued due to the Tenants' act or neglect. However, I find that these two incidences do not amount to a "significant interference" with the Landlord's rights ***at this time***. The Tenant admitted that by-law officials had on the day of the hearing inspected the rental property again and would likely be issuing another violation notice to the Landlord for overgrown grass. Consequently, the Tenant now has written notice that if the Landlord receives further notices or fines due to the Tenant's failure to cut the grass or due to the Tenant's neglect in setting off the fire alarms, his tenancy may then be in jeopardy.

I find that there is insufficient evidence that the Tenants stole the Landlords tools as he alleges. I make no finding with respect to the Landlord's allegation that the Tenant is growing marijuana on the rental property given that the Landlord said he discovered this only a week ago (or two weeks after he served the Notice to End Tenancy) and therefore I find that it could not have been a reason for issuing the Notice. Similarly, I find that the issue of the Tenant subletting without the Landlord's consent arose after July 6, 2012 and therefore could not have been a reason for the Landlord issuing the One Month Notice. Furthermore, the Landlord provided no evidence in support of his assertion that his insurance would be invalid if the Tenant took in roommates.

In summary, while the Tenants' refusal to cut the grass and the fines for their false fire alarms have been a nuisance for the Landlord, I find that they do not meet the threshold of "significant interference" which is required to evict the Tenants. However, **the Tenant now has written notice that any further by-law violations may be sufficient to meet the standard of significant interference and therefore result in the tenancy ending.** I also find that the Landlord cannot rely on allegations of the Tenants growing marijuana or subletting without his consent in support of this One Month Notice given that these issues arose after the One Month Notice was served.

Finally, the Landlord argued that the tenancy agreement was of no force and effect given that the Tenant, J.H., had moved out. However, this also occurred after July 6,

2012 when the Landlord served the One Month Notice and it is not identified as one of the reasons selected on the 2nd page of the Notice for seeking to end the tenancy. RTB Policy Guideline #13 (Rights and Responsibilities of Co-Tenants) says as follows:

> "Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and [emphasis added] a new tenancy agreement is signed, the first lease agreement is no longer in effect."

Consequently, the Parties tenancy agreement is not invalid as a result of the Tenant, J.H., vacating and she will remain jointly and severally liable for any unpaid rent or damages to the rental unit caused by the act or neglect of the Tenant, J.K., or any person he permits on the rental property (until such time as the Landlord agrees to remove her as a party to the lease).

Conclusion

For all of these reasons, the One Month Notice to End Tenancy for Cause dated July 6, 2012 is cancelled and the tenancy will continue. 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 02, 2012.

Residential Tenancy Branch