Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT INC. and TREATY DEVELOPMENTS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, RP

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause; and, Orders for repairs and emergency repairs. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant identified an individual (referred to by initials SY) as her landlord in filing this Application for Dispute Resolution as SY signed the 1 Month Notice that is under dispute and the name of the landlord was left blank in the space provided on the 1 Month Notice. The tenant had served SY with the hearing documents. The person appearing as the respondent at the hearing was not SY and the tenant claimed she was unfamiliar with the person appearing for the landlord. The tenant expressed some confusion over the landlord's identify.

I noted that the tenancy agreement identifies a development business as her landlord yet the evidence provided for the hearing came from a different business. The tenant submitted that her rent cheques are made out to the business identified on the tenancy agreement.

The respondent explained that SY is an employee of the property management company that the landlord has retained to manage the property. The respondent appearing at the hearing stated that he is the principal of the property management company and SY's supervisor.

In turning to the 1 Month Notice I noted that the identity of the landlord is left blank in the space provided for the landlord's name. The form states that where the landlord is a

business the landlord is to enter the full legal business name. SY's name appears in the space provided for the signature of the landlord or landlord's agent.

I amended the tenant's Application, with consent of both parties, to include the property management company and the name of the landlord that appears on the tenancy agreement.

Issue(s) to be Decided

1. Was a valid and enforceable 1 Month Notice served upon the tenant and if so, should the 1 Month Notice be upheld or cancelled?
2. Is it necessary to issue Order for repairs or emergency repairs?

Background and Evidence

The tenancy commenced April 15, 2013 and the tenant is required to pay rent of $900.00 on the 1st day of every month. The tenant received a 1 Month Notice dated August 15, 2013. I was provided conflicting testimony as to when the tenant received the 1 Month Notice.

The landlord agent submitted that the 1 Month Notice "would have" been served by SY on the same day it was issued, on August 15, 2013. The tenant submitted that it was given to her on August 20, 2013. As the landlord did not present a sworn statement with respect to service of the 1 Month Notice, in the absence of SY at the hearing, I accepted the tenant's testimony that the tenant was served the 1 Month Notice on August 20, 2013.

As previously indicated in the preliminary matters, the name of the landlord was left blank on the 1 Month Notice. The reasons indicated on the 1 Month Notice are:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - jeopardize a lawful right or interest of another occupant or the landlord

The landlord's agent submitted that the reason the 1 Month Notice was issued was because the tenant posted messages on the inside of her window that reflect poorly on the landlord and the property. The landlord provided faxed copies of photographs taken of the window. I was unable to decipher the messages from the evidence submitted by fax. The landlord's agent testified that the statements included messages such as: "Don't rent here" and "Slumlord". The landlord's agent initially submitted that the tenant refused to take the posters down when SY spoke to her about the messages. The landlord's agent subsequently testified that that the tenant did take the posting down but then re-posted them.

The tenant acknowledged posting messages in her window that the term "Slumlord" appeared in the messages. The tenant denied there was a statement of: "Don't rent here". The tenant explained that the messages were posted for only one day as she took them down after SY came to talk to her about them. The tenant denied reposting the messages. The tenant explained that she was motivated by frustration with the landlord's failure to sufficiently treat the unit for bedbugs and roaches or make repairs that were promised to her when the tenancy formed.

After discussing a tenant's options with respect to seeking repairs from a landlord, such as making written requests of the landlord and seeking repair orders under the Act, the tenant agreed to refrain from posting messages in her window in the future.

The tenant also submitted that a move-in inspection was not conducted until June 3, 2013 despite the tenant's requests for one. I was not provided a copy of the inspection report by either party.

With respect to emergency repairs I asked the tenant to provide verbal testimony as her written submissions were less than clear as to the nature of her request. I found the tenant described repair issues that did not meet the definition of emergency repairs as provided under section 33 of the Act.

The landlord stated that tenants are encouraged to put requests for repairs in writing, but that email is sufficient. The landlord's agent appeared to be aware of a landlord's requirement to repair and maintain the property but explained that the landlord must be made aware of any specific issue the tenant may have. The landlord's agent claimed he was unaware of most of the repair issues identified by the tenant.

The tenant raised an issue respect to receiving a 10 Day Notice to End Tenancy for Unpaid Rent in October 2013 even though rent had already been paid for October 2013. The tenant was concerned the actions of the landlord were an attempt to harass the

tenant. Although this issue was not part of this Application for Dispute Resolution before me, I have recorded the landlord's response in an attempt to defuse a future dispute between the parties. In response, the landlord indicated the 10 Day Notice was issued in error and the landlord's copy of the 10 Day Notice has since been destroyed. The landlord's agent acknowledged that the landlord had not communicated to the tenant that the 10 Day notice had been withdrawn or destroyed. I strongly suggested to the landlord that withdrawal of a Notice to End Tenancy be communicated to the tenant in writing. The landlord agreed to do so.

Analysis

The Act requires that when a landlord gives a Notice to End Tenancy it must be given in the approved form. The approved form requires the landlord to provide the landlord's "full legal business name" where the landlord is a business. I find the absence of the landlord's name in the space provided for such on the approved form invalidates the Notice dated August 15, 2013. As such, the Notice is of no force or effect and the tenancy continues. Below, I provide the reasons for my findings.

While a Notice to End Tenancy may be amended in certain circumstances I find, in the circumstances before me, it is not appropriate to amend the 1 Month Notice. . Residential Tenancy Policy Guideline 11: *Amendment and Withdrawal of Notices* provides the following:

> The Legislation allows an arbitrator, on application, to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances.

I find it reasonable that the tenant did not know, or ought to have known, the identity of the landlord that was missing from the landlord considering:

1. The tenancy agreement and the tenant's rent cheques identify the landlord as a business other than the property management company;
2. The tenancy agreement provided as evidence does not include a signature or name of the landlord's agent;
3. The landlord did not produce any documentation to show that the tenant was notified in writing that the landlord's agent was that of a property management company or SY; and,

4. SY is the only name on the 1 Month Notice connected to the identity of the landlord yet I heard the property management company is the agent for the landlord.

In light of the above, I find the tenant's confusion over the identity of the landlord is reasonable and, as such, it is not appropriate to amend the 1 Month Notice.

In discussing options available for tenants where repairs are required I am reasonably satisfied the tenant will not post messages in her window in the future in an attempt to get the landlord to take action. I find it evident that both parties have erred with respect to their respective rights and obligations under the Act and, as such, I consider the issue of the tenant posting messages in the window to be resolved. Accordingly, I order the tenant to refrain from doing so in the future and I order the landlord to not issue another 1 Month Notice with respect to the posting of the messages in August 2013.

With respect to emergency repairs, the Act defines emergency repairs as being:

> (a) urgent,
>
> (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
>
> (c) made for the purpose of repairing
>
> > (i) major leaks in pipes or the roof,
> >
> > (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
> >
> > (iii) the primary heating system,
> >
> > (iv) damaged or defective locks that give access to a rental unit,
> >
> > (v) the electrical systems, or
> >
> > (vi) in prescribed circumstances, a rental unit or residential property.

I find the tenant's testimony provided during the hearing did not satisfy me that she requires emergency repairs, as defined by section 33 of the Act. Therefore, I make no orders for emergency repairs.

Nevertheless, upon hearing the tenant's testimony, I find it reasonably likely the tenant has repair issues that require inspection or repair on part of the landlord. I find the landlord's submission that repair requests be made in writing to be reasonable as it is beneficial for both parties. Since the tenant has yet to put repair requests in writing I

find it reasonable that the tenant seek repairs by way of a written request provided to the landlord.

The tenant is given leave to reapply should the landlord fail to take sufficient action to remedy the repair issues identified by the tenant in writing within a reasonable amount of time after receiving the tenant's request for such.

Conclusion

The 1 Month Notice dated August 15, 2013 is not valid or enforceable and the tenancy continues. I have given both parties an order with respect to future conduct regarding posting of messages in the window.

I have made no orders for repairs or emergency repairs although the tenant is at liberty to file a future application if written requests for repairs are not sufficiently investigated and/or made by the landlord within a reasonable period of time after receiving written notification of repair issues.

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: October 11, 2013

Residential Tenancy Branch