

DECISION

Dispute Codes CNC, DRI, LRE, OLC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, to dispute a rent increase, to restrict the Landlord's right of entry, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee for this application.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on May 8, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?
2. Does the Tenant have grounds to dispute the rent increase?
3. Is it justified to restrict the Landlord's right of entry to the rental unit?
4. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on June 24, 2013 as a written fixed term tenancy agreement with a expiry date of June 30, 2014. The ownership of the rental unit changed to the present Landlord during the fixed term tenancy and the present Landlord did not complete a new written tenancy agreement at the end of the fixed term and he did not require the Tenant to move out. The Landlord renewed the tenancy on a verbal month to month basis by accepting rent after the fixed term ended. Rent is \$650.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$325.00 at the start of the tenancy.

The Tenant said the Landlord has been harassing her and the other tenants to move out of the rental complex by increasing the rent illegally. The Tenant said the Landlord

had his agent text the Tenant that her rent was going up by \$100.00 in June, 2017. The Tenant said this is wrong and she now is disputing the rent increase.

Further the Tenant said the Landlord issued a 1 Month Notice to End Tenancy dated May 1, 2017 with an effective vacancy date of May 31, 2017. The reason on the Notice is that the fixed term tenancy has ended and the Landlord does not want to renew the tenancy. The Tenant said this is wrong as well and the Landlord will not listen or comply with the Residential Tenancy Act. The Tenant said she is requesting to have the Notice to End Tenancy cancelled.

The Tenant continued to say the Landlord does not give proper notice to enter the rental unit and the Tenant is concerned the Landlord will enter her unit and remove her belongings while she is away from the unit. The Tenant requested a restriction be put on the Landlord's right of entry into her rental unit.

The Tenant said in closing the Landlord does not listen and he does not understand the Residential Tenancy Act so the Tenant is requesting an order for the Landlord to comply with the Act, regulations and tenancy agreement.

Analysis

Section 12 (b) of the Act says that a tenancy can be in writing or verbal and that standard terms apply to both. In this situation there was a fixed term tenancy that ended on June 30, 2014 with a clause that said the Tenant had to move out. The Landlord did not enforce this clause but accepted additional rent payments up to the present time which established a new verbal tenancy on a month to month basis.

Section 44 of the Act states the only ways a tenancy ends.

1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 *[tenant's notice]*;

(i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;

(ii) section 46 *[landlord's notice: non-payment of rent]*;

(iii) section 47 *[landlord's notice: cause]*;

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The Landlord issued a 1 Month Notice to End Tenancy for cause indicating the reason was the fixed term tenancy had ended and the Landlord did not want to renew the tenancy. In this situation the tenancy is not a fixed term as the Landlord and Tenant established a new tenancy starting July 1, 2014 as a month to month verbal tenancy. I find the reason the Landlord stated for issuing the 1 Month Notice to End Tenancy for Cause dated May 1, 2017 is not valid as this tenancy is not a fixed term tenancy. Consequently I cancel the 1 Month Notice to End Tenancy for Cause dated May 1, 2017 and I order the tenancy to continue as verbally agreed to.

Section 42 of the Act says (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

I accept the Tenant's evidence and affirmed testimony that the Landlord gave the Tenant notice of a rent increase of \$100.00 by text message through his agent. This method of notifying a tenant of a rent increase does not comply with the Act; therefore I dismiss the Landlord's notice of rent increase and order the rent to continue at \$650.00. The Landlord is at leave to issue a notice of rent increase to the Tenant that complies with the Act and regulations.

Section **29** of the Act says: (1) 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;

(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;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I accept the Tenant's evidence and testimony that the Landlord is likely to enter the Tenant's unit without proper notice while she is away from the rental unit. Therefore I order the Landlord to comply with the Act and issue proper notices to the Tenant and obtain acceptance of those notices from the Tenant before the Landlord can enter the Tenant's rental unit unless there is an emergency situation.

Further it is the responsibility of all landlords and tenants to comply with the Act, regulations and tenancy agreements; therefore I order the Landlord to comply with the Act regulations and tenancy agreement. The Landlord may want to refer to the Residential Tenancy Branch web site for information or the Landlord can phone an Information Officer at 1-800-665-8779 for information on tenancies and the responsibilities of landlords and tenants.

As the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord by reducing the rent payment by \$100.00 from \$650.00 to \$550.00 for the next rent payment.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated May 1, 2017 is cancelled and the tenancy is ordered to continue as set out in the verbal tenancy agreement.

The \$100.00 rent increase issued by the Landlord is cancelled and the rent is ordered to be \$650.00 except for one month at \$550.00 so the Tenant can recover the filing fee.

The Landlord is ordered to provide proper Notice to the Tenant prior to entering the rental unit.

The Landlord is ordered to Comply with the Act, regulations and verbal tenancy agreement.

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: June 13, 2017.

Residential Tenancy Branch