



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC,FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a One Month Notice to End Tenancy for Cause, to recover an overpayment of the security deposit, and to recover the filing fee paid for these proceedings.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on April 10, 2009.

All parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

- Is there sufficient cause to uphold the landlords Notice to End tenancy?
- Did the tenants overpay their security deposit?
- Are the tenants entitled to recover their filing fee?

Background and Evidence

This tenancy began on October 15, 2008. Rent was \$1,800.00 per month payable on the 1st day of each month and the agreement is for a month to month tenancy. The tenants paid a security deposit of \$1,800.00 on October 15, 2008. The landlord testifies that at the beginning of the tenancy she told the tenants that the property would be put on the market to be sold so they had to be prepared to move out at short notice. An agreement was reached where the landlord would give the tenants 45 days notice to move if the property was sold.

The landlord and tenants agreed on 24 hours notice from the realtors for any house viewings. The tenants testify that they were told that the viewings would start in the spring but instead they started in the middle of November 2008. The landlord has included in her evidence negative reports from the realtors about how untidy, dirty and smelly the house was during any viewings and that this was putting off prospective buyers.

The tenants testify that they made every attempt to keep the house clean and tidy but found this difficult with the high volume of viewings up to five a week and with their different work and shift patterns. The tenants felt that they were more than accommodating to the realtors and landlords and put in a big effort to keeping the house clean and tidy. They did find this increasingly difficult to manage because viewings were often arranged for 5.30 or later in the evening when the tenants were coming home from work and were outside the times agreed for showings to take place. The tenants testify that they found it difficult to be out of the house during these times and the excessive viewings interfered with their normal life.

The tenants testify about meetings with the landlord concerning rent and utility increases but this does not form part of this application.

On March 30, 2009 the landlord served the tenants with a One Month Notice to end tenancy for cause, citing reasons for ending the tenancy as follow: (1) The tenants have seriously jeopardized the health and safety or lawful right of another occupant or the landlord. (2) The tenant has put the landlords' property at significant risk. (3) The tenant has engaged in an illegal activity that has, or is likely to; jeopardize a lawful right or interest of another occupant or the landlord.

Analysis

I find that the landlords have failed to provide sufficient evidence to establish cause to end the tenancy on any of the grounds cited. The landlords have not established that the tenants are engaged in an illegal activity to jeopardize a lawful right or interest of another occupant or the landlord. They have not established that the tenants have seriously jeopardized the health and safety or lawful right of another occupant or the landlord. With regards to the landlords property being at significant risk. There is no evidence to support this. Not keeping the property to a reasonable standard of cleanliness does not constitute a significant risk to the property. s.47(d) Therefore I find that the notice to end tenancy is cancelled.

The landlord testifies that she was not familiar with the Residential Tenancy Act when she took the tenants security deposit and does not dispute that it was double the amount permitted under the Act. S. 19(1)(2). Therefore the tenants are entitled to \$900.00 back from the security deposit.



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I find that the tenants are successful in their claim and therefore entitled to recover the filing fee of \$50.00.

Conclusion

The Notice to End Tenancy for cause is cancelled, with the effect that the tenancy continues.

The tenants are entitled to withhold \$900.00 from the security deposit overpayment and may deduct this from their next months rent.

I find that the tenants are entitled to recover \$50.00 for their filing fee and they may deduct this from their next months rent.

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: April 24, 2009.

Dispute Resolution Officer