



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes: CLC, MNDC, OLC, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided by both parties prior to the Hearing. Both parties attended at the Hearing, and gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

This is the Tenant's application for the following:

1. to cancel a One Month Notice to End Tenancy for Cause;
2. for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement;
3. for an Order that the Landlord comply with the Act; and
4. to recover the filing fee for the cost of the Application from the Landlord.

Background and Evidence

The Landlord's agent testified that she personally served the Tenants with the Notice to End Tenancy at 9:35 a.m. on April 27, 2009, at the Tenants' residence.

The Tenant CT testified that she mailed the Landlord the Notice of Hearing Documents by registered mail, on May 4, 2009. The Tenants provided a tracking number of the registered mail documents.

The parties agreed on the following facts:

The Tenancy started on March 15, 2009. The Tenancy Agreement is a one year lease. The monthly rent is \$1,200.00 per month, due on the first day of each month. On March 13, 2009, the Tenant paid the Landlord \$600.00 for prorated rent for the month of March, 2009, together with a security deposit in the amount of \$600.00 and a pet deposit in the amount of \$600.00. There was no Move-In Condition Inspection Report done.

The rental unit is a house with a basement and garage. There are 2 bedrooms upstairs and 2 bedrooms downstairs. The house was in need of repairs to the kitchen and bathroom when the Tenants took possession. The Tenants moved in to the rental unit before the repairs were completed. There was an agreement reached between the Landlord and Tenant with respect to the Tenants completing the painting and some other work. The terms of the agreement were in dispute.

A number of documents were entered into evidence, including but not limited to:

- copy of One Month Notice to End Tenancy for Cause;
- copy of Tenancy Agreement;
- handwritten statement of Tenant's witness DR;
- handwritten statement of Tenant CR;
- handwritten statement of Tenant's witness NB;
- 61 photographs of the rental unit; and
- Handwritten statement of Tenant's witness SW.

Tenant's testimony and evidence

The Tenants testified that they wanted to move into the rental unit as soon as possible and reached an agreement with the Landlord that the Tenants would do painting and other work, if the Landlord paid for the materials. The Tenants testified that some of the co-occupants moved in on March 15, 2009, and started to do the work required to make the house livable. The Tenants stated that they repaired the walls and painted the inside of the house; got rid of garbage and hypodermic needles in the yard and the house; did considerable yard work including pruning overgrown trees and shrubs; and cleaned the rental unit, including the carpet. The Tenants stated that the Landlords have not reimbursed them for paint, rollers, paint trays and drywall filler and are applying for a monetary order in the amount of \$380.00 for the cost of those items.

The Tenants testified that when they moved into the rental unit, there were problems with the locks on the front, back and garage doors. The front door's lock was not working and the dead bolt had to be thrown every time the Tenants entered and exited the rental unit. There are two doors in the basement. One was nailed shut and the other was locked from the inside with a bar. No key was provided for the garage door and the Tenants had to padlock the door to keep vagrants out of the garage. The Tenants testified that they had a dog stay with them until the locks were fixed, for protection.

The Tenants testified that there were rats living at the rental property when they moved in and that they had advised the Landlord, who stated that he would set some baited traps. The Tenants testified that the Landlord has not done so, and that they still have rats at the rental property.

The Tenants testified that the Landlord's agent and a man came to their residence in the morning of April 27, 2009, and gained access to the rental unit without notice and without their permission. The Tenants testified that the Landlord's agent was given permission to enter the foyer, but not the remainder of the residence. The Tenants testified that the Landlord's agent and another male person forced their way into the residence, were verbally abusive and inspected the bedrooms where their children were

sleeping. The female Tenant objected a number of times, because the female teenage children were sleeping without clothing on. The Tenants testified that the Landlord was asked to leave, but refused to do so.

The Tenants testified that, immediately after the inspection, the Landlord provided them with a Notice to End Tenancy for Cause because there were too many occupants in the residence. The Tenants testified that they had a guest and a foster child staying overnight, but the Landlord's agent insisted that they were not allowed to have overnight guests in the rental unit.

The Tenants testified that the Landlord had verbally agreed that they could have a foster child move into the unit. The Tenants testified that there were 8 children at the rental unit at one time, but that the extra children were guests at a barbeque and were not residing at the rental unit.

The Tenants testified that, in any event, the Landlord has never given them written warning of any breach of the tenancy, and therefore they have not been given a reasonable amount of time to correct any breach. The Tenants state that the Notice to End Tenancy should therefore be cancelled.

Testimony of Tenant's Witness DW

The Witness gave affirmed testimony that she is a representative for the Tenant RL, who is a tenant, but not a party to this Hearing.

Testimony of Tenant's Witness NB

The Witness gave the following affirmed testimony:

- She was present at the rental unit when the Tenants moved in and gave them a hand with fixing holes in the walls; cleaning up glass in the front yard; disposing

of roof shingles left in the yard; and disposing of garbage in the yard and in the house.

- The floors were dirty when the Tenant moved in.
- The Tenant had someone do the counter tops and tiles in the kitchen.

Landlord's agent's testimony and evidence

The Landlord's agent testified that the Tenants knew that the rental unit was in need of repairs and was not ready for occupancy, but that the Tenants were anxious to take possession of the rental unit as soon as possible. The Landlord's agent denied that the Landlord agreed to pay for paint and materials, and in any event, the Tenants were supplied with paint. The Landlord's agent testified that the Landlord's workmen, not the Tenants, repaired the kitchen and bathroom.

The Landlord's agent testified that she is unaware of any problems with the locks on the doors. She stated that the Tenants may have spoken to the owner about this issue.

The Landlord's agent stated that she had never heard anything about rats in the house. She testified that there were rat traps on the rental property, but that they were preventative, as there rats can be a problem in that neighbourhood.

The Landlord's agent testified that the Lease only allows 5 people to reside in the rental unit, and that the Tenant has 6 people residing in the unit. The Landlord's agent testified that the rental agreement clearly allows for 3 cats only. The Landlord's agent stated that the Tenants have a pit bull in the rental unit. The Landlord's agent testified that the additional occupants and having a dog on the premises are both breaches of material terms of the tenancy agreement. The Landlord's agent testified that the Tenants were not given a written warning about the breaches, but have been verbally warned three times about the extra people living in the rental unit.

The Landlord's agent adamantly denied telling the Tenants that they could not have overnight guests.

The Landlord's agent testified that she did not give the Tenants notice of the inspection on April 27, 2009, but that the female Tenant allowed them in to the rental unit. The Landlord's agent denied forcing her way into the rental unit or raising her voice, as alleged by the Tenants. The Landlord's agent testified that the Tenant did ask her to leave, but not until she was served with the Notice to End Tenancy for Cause. The Landlord's agent testified that she left immediately thereafter. The Landlord's agent stated that the testimony the Tenants have given is untrue.

Testimony of Landlord's Witness CS

The Witness gave the following affirmed testimony:

- The Witness is the owner of the rental unit.
- The Witness was at the rental property when the Tenants moved in.
- The rat boxes were there as a preventative measure.
- The Witness stated that the Tenants did ask about keys for the garage and the back doors.

Testimony of Landlord's Witness PJ

The Witness gave the following affirmed testimony:

- The Witness was with the Landlord's agent when she did the inspection on April 27, 2009.
- A young man opened the door, holding a pit bull. When asked if his parents were there, he closed the door between the foyer and the house. The female Tenant came to the door and invited them into the house.
- The Witness did not go into the rooms with the Landlord's agent.

- The female Tenant did ask them to leave, but not until the Landlord's agent had been through the house.
- The Witness was with the Landlord's agent when the Tenancy Agreement was signed by the Tenants. There was no discussion regarding reimbursing the Tenants for materials, or for any reduction in rent for doing any work.

Analysis

Application to cancel Notice to End Tenancy for Cause

The Landlord gave the following reasons for ending the tenancy on the Notice to End Tenancy for Cause:

- The Tenant has allowed an unreasonable number of occupants in the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The rental unit is a four bedroom house. There was conflicting evidence with respect to the number of occupants living in the rental unit. Other than the overnight guests, there was no proof that there were more than 6 people living in the rental unit. I do not find that 6 people living in a 4 bedroom house is an unreasonable number.

Clause 5 of the tenancy agreement clearly allows for only 5 people to occupy the rental unit. I find this is a material breach of the tenancy agreement. The Tenants testified that the Landlord verbally agreed to allow another occupant, a foster child, to live in the unit. The Landlord denies giving permission. The Tenancy Agreement was not amended to include another occupant.

Clause 17 of the tenancy agreement indicates the Landlord gave permission for the Tenants to have three cats, and no other pets without the Landlord's permission. The Landlord did not give permission for the Tenants to have a dog at the rental unit. There

was a dispute over whether the dog lived at the unit, or was visiting, however, based on the testimony of the Tenants, I find that the dog was living at the unit. The Tenants stated that the dog was there to protect them from intruders. I find this is also a breach of the tenancy agreement.

The Landlord's agent testified that she gave the Tenants verbal warnings about the number of occupants and the dog, however she did not give them written warning as is required. Therefore, I allow the Tenants' application to cancel the One Month Notice to End Tenancy for Cause. I find that the Notice to End Tenancy served on the Tenants constitutes written warning. The Landlord may issue another One Month Notice to End Tenancy should the Tenants not correct the breaches within a reasonable amount of time.

Application for a Monetary Order

The Tenants have not proven their claim for a monetary order. The Tenants testified that they wanted to move in to the rental unit immediately. They were aware that the rental unit required painting and repairs, but chose to move in anyway. In any event, the Tenants did not provide copies of receipts for the amount claimed. I dismiss this portion of the Tenants' claim without leave to re-apply.

Application for an Order that the Landlord Comply with the Act

The Application for Dispute Resolution requires the Applicant to state the Section of the Act, regulation, or tenancy agreement to which they were requesting the Landlord comply. The Tenants did not do so, and therefore this portion of the Tenant's application is dismissed without leave to re-apply.

The Tenants have been successful in their application to cancel the One Month Notice to End Tenancy for cause, and are entitled to recover the cost of the filing fee from the

Landlord. Pursuant to Section 72 of the Act, the Tenants may deduct \$50.00 from a future rent payment to the Landlord.

Conclusion

The One Month Notice to End Tenancy for Cause is cancelled. The tenancy remains in full force and effect. The One Month Notice to End Tenancy for Cause is deemed to be written warning to the Tenants of breaches of material terms of the tenancy agreement.

The Tenants may deduct the amount of \$50.00 from a future rent payment to the Landlord.

The Tenant's application for an Order that the Landlord comply with the Act is dismissed without leave to re-apply.

The Tenant's application for a Monetary Order is dismissed without leave to re-apply.

June 8, 2009
