

Dispute Codes: CNC

Introduction

This is the Tenants' application to cancel a One Month's Notice to End Tenancy for Cause.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Should the Notice to End Tenancy issued August 18, 2009, be cancelled?

Background and Evidence

The Landlords inherited the Tenants when they purchased the rental unit on August 15, 2009. The tenancy started in mid-June, 2009. The rental unit is situated on the upper floor of a property containing three suites. The Notice to End Tenancy was issued on the following grounds:

- The Tenant or a person permitted on the property by the Tenant has: seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and put the Landlord's property at significant risk.
- The Tenant has caused extraordinary damage to the rental unit or the property.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- The Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit.
- The pet deposit was not paid within 30 days as required by the tenancy agreement.

The Landlords gave the following testimony:

The Landlords provided a copy of a one page Lease Agreement between the previous owner/landlord and the Tenant CH. The Landlords testified that:

- The Tenants were playing loud music after 10:00 p.m. at night, in contravention of the tenancy agreement, and were drinking and throwing furniture off the balcony.
- The Tenants had three pit bull dogs, and the Tenants were not cleaning up their excrement.
- The Landlords are afraid to collect the rent from the Tenants.
- The Tenants are smoking marijuana on the property, in contravention of the tenancy agreement.
- There were too many people visiting the Tenants.
- The Tenants changed the lock on their door and have not provided the Landlords with a copy of the key.
- The Tenants put tin foil on the windows, and the Landlords suspect they are growing marijuana in the rental unit.
- The Tenants are supposed to pay their own utilities, but have not done so.
- The Tenants have put garbage in the electrical room, which the Landlords removed. The Landlords changed the lock on the electrical room, and someone tampered with the lock and broke the Landlords' lawn machine.

The Tenant gave the following testimony:

- The Tenant works every day in a foundry and does not party or drink to excess.
- The day after the Tenant moved in, the Landlord phoned the Tenant and said he wanted to move his son into the Tenant's suite after the purchase was completed.
- When the Tenant moved in, the rental unit was a "train wreck". The Tenant had to paint the rental unit and get rid of the previous tenant's discarded decrepit furniture (a couch and some side tables). The Tenant did not throw the furniture off the balcony, he lowered it down using ropes.
- The Tenant has one dog, a pug, and the other tenants also have a pug and a cat.
- The Tenant does not smoke marijuana. The tin foil on the windows was put up for heat protection and has since been taken down.

- The previous landlord told the Tenant he could store his tools and a weed eater in the electrical room. The Tenant did not break into the electrical room.
- The previous landlord gave the Tenant the new push-button lock to put on his door. The Tenant will give the new Landlords a key to the lock.
- With respect to collecting rent, the practice has been for the Landlord to pick up the rent at the Tenant's residence. The Tenant offered to mail the Landlords post-dated cheques for rent payments in the future.

Analysis

On careful consideration of the oral testimony and documentary evidence provided, I make the following findings:

- The Landlords have not proven that the Tenants have seriously jeopardized the health or safety or lawful right of another occupant or the Landlords, put the Landlords' property at significant risk, or caused extraordinary damage to the rental unit or property. The Tenant testified that he lowered the previous tenant's furniture down from the balcony with ropes, and I accept his testimony in this regard. There is no corroborative evidence or testimony from any witnesses to support the Landlords' allegations that the Tenants were playing loud music after 10:00 p.m., smoking marijuana, or that they had broken into the electrical room and damaged the Landlords' lawn mower.
- The Landlords have not proven their claim that the Tenants have three pit bulls, in contravention of the Lease Agreement. The Tenant stated that he does have one pug. The Landlords' own testimony and evidence was contradictory with respect to whether pets were prohibited, or if accepted, if there was a pet deposit required. The Lease Agreement states "No pets of any kind allowed inside/outside the premises." However, the Landlords noted on the Notice to End Tenancy for Cause, that the Tenants have not paid a pet deposit within 30 days, as required by the tenancy agreement. There was no written demand for a pet deposit entered in evidence.
- The Landlords provided no evidence of the Tenants giving false information to prospective tenants or purchasers of the rental unit.

- The Landlords provided a copy of a letter to the Tenants giving notice with respect to: removing their dog(s) from the rental property; not using the electrical room as storage; unauthorized changing of the lock; paying for utilities; ceasing unauthorized work in the suite; and inspecting the rental unit. The letter is dated August 19, 2009, which is one day after the Landlords issued the Notice to End Tenancy. Therefore, the Landlords' claim on the Notice, that the Tenants did not correct a breach of a material term of the tenancy within a reasonable time of receiving notice of the breach, is not supported.

For these reasons, the Tenants' application to cancel the One Month Notice to End Tenancy issued August 18, 2009, is granted. The Notice to End Tenancy is cancelled and the tenancy remains in full force and effect.

Conclusion

The Landlords' application is dismissed without leave to reapply. The tenancy remains in full force and effect.

The Tenants are ordered to provide the Landlords with a key to the lock immediately.

The Tenants are ordered to provide Landlords with a series of post-dated cheques for rent, to be mailed to the address provided by the Landlords on the Application for Dispute Resolution.

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: November 2, 2009.
