



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause, a Monetary Order to recover the filing fee and other issues.

The tenant served the landlord by registered mail on or about August 17, 2009 with a copy of the Application and Notice of Hearing. The landlord confirmed he had received these documents.

Both 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 witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy for cause can be cancelled?
- Has the landlord provided sufficient evidence to issue an Order of Possession?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy agreement started with one tenant sometime around the beginning of September 2002. The tenant was later joined by her husband but the tenancy agreement remained in the

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one name. Rent for this unit is \$800.00 per month which is due on the 1st of each month. The tenant paid a security deposit of \$325.00 on or around the beginning of September 2002. The landlord served the tenant with a Notice to End Tenancy for Cause on August 11, 2009. The Notice gave the following reasons to end the tenancy.

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonable disturbed another occupant or the landlord
- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord
- Put the landlords property at significant risk

The tenant has engaged in illegal activity that has, or is likely to:

- Damage the landlords property
- 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 tenant has caused extraordinary damage to the rental unit/site or property

The tenant has not done required repairs of damage to the unit/site.

The tenants dispute the landlords' allegations. They state that they are unsure what he means by these reasons. The tenants state that communication has broken down. There has been a recent argument between the landlord and the tenants' husband where the tenants' husband suffered a broken thumb. The tenants allege the police were called but no charges were laid. The police provided a file number to the tenants in the event they wanted to file civil charges against the landlord.

The tenants testify that on July 31 at approximately 12.30 am the tenants were woken by their living room window being broken. The police were called and the tenants' husband boarded the window up. The tenants offered to replace the window but could not do so at that time due to financial difficulties. They asked the landlord if he could claim on his insurance but he refused

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to do so. To date the window has not been repaired. The tenants testify that this was an act of vandalism and they had no control over it.

The tenants claim that after three years of having their dog the landlord has now taken exception to it and complains if the tenants let their dog out into the adjacent field at the same time as the landlords' dog.

The tenants claim that there has been no damage to the unit or property. This is the second Notice that has been served stating the same issues. On the first occasion the hearing did not go ahead as the parties managed to reach a resolution between them.

The tenants claim they have made several improvements to the unit and property and the landlord has provided some of the materials associated to these projects. The tenants' husband has provided the labour at no cost to the landlord. The tenants have built a garden shed, improved the fence and erected a cover over the patio area. These structures have been in place for approximately 6 years and the landlord has not complained about them before in fact he provided the roofing material for the shed. The tenants testify that they have not been given any details, dates or other information regarding the reasons given on the Notice to End Tenancy.

The landlords' agent testifies on behalf of the landlord. He claims the tenants have not allowed the landlord access to the unit to replace the broken window. He claims the tenants have built a structure on the property without permits and the property has been visited by the City by-laws inspector who verbally requested that the structures be removed as they were erected in violation of city bylaws. The landlords' agent states that the landlords building insurance will be null in void if they became aware of the structures therefore the tenants have put the landlords' property at significant risk. These structures have also damaged or are likely to damage the landlords property with water and moisture build up. He also claims that they cause a safety issue with regard to accessibility from the property.

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The landlords' agent also claims that the tenants have a significant amount of stop and go traffic to the residence which they argue is a sign of illegal activities taking place. The landlords witness testifies that she has observed an illegal activity taking place where she saw the tenant hand a brown paper bag to another person in a car and receive some cash. When questioned she did not know what was in the bag.

The landlords' agent also claims that the tenant's husband is operating his business out of the property and storing junk and scrap metal. The tenant's husband claims that he does operate a business but not from the property. The tenant claims the landlords photographs show the tenants truck moving the landlords' appliances and junk from the property which were not items connected to his business.

The landlords witness claims the tenants' dog has chased and bitten her young daughter and as a consequence she is fearful of the dog and not comfortable visiting the landlord. The landlord has also raised issues about an unlicensed car being parked on the property causing damage to the grass and an amount of car tires stored on the property. The tenants dispute this. The car was given to him by a friend and was waiting to be sold or licensed. It has not damaged the landlords property and the tires do not belong to the tenant they are on the park land and not the landlords' property.

The tenants states that they always had an amicable relationship with the landlord and it only became difficult when he had been drinking. The incident that occurred when the tenants thumb was broken has now escalated and everything the tenants do is now a problem to the landlord.

Analysis

I have carefully reviewed all the written documents and testimony of both parties. I find in this instance that the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

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I find the landlord has not provided sufficient evidence that the tenants have acted in an illegal manner, he has not provided any evidence as to the City By-Law enforcement, he has not provided sufficient evidence that the tenants have erected a structure without the consent of the landlord and that these structures have caused damage to his property. The only evidence agreed upon is that the window of the tenants unit has been broken and the tenants argue that they have tried to resolve this with the landlord. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated August 11, 2009 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, They are entitled to recover the \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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 01, 2009.

Dispute Resolution Officer