

DECISION

Dispute Codes: CNC and FF

Introduction

This application was brought by the tenants seeking to have set aside a one-month Notice to End Tenancy for cause served on September 29, 2009. The tenants also sought to recover the filing fee for this proceeding.

Issues to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether the tenant is entitled to recover their fee for this proceeding.

Background and Evidence

This tenancy began on February 1, 2006. Rent is \$1,000 per month due on the first day of the month and the landlord holds a security deposit of \$500 paid on or about February 1, 2006.

During the hearing, the property manager gave evidence that the Notice to End Tenancy had been served as a result of the subject tenants and a neighbouring tenant

having, without consent, used a recently vacated adjoining space to store personal belongings.

The landlord had noted the use in late April and the property manager shortly after asked both sets of tenants to clear their property from the area and had been given assurance that they would.

In mid-August, the landlord discovered that the area was still being used as storage, boarded it up and had the property manager advise both sets of tenants that he required \$600 for past use of the area for storage. The tenants collectively offered \$250, of which \$50 was from the applicant tenants. The landlord subsequently requested an additional \$250.

On a subsequent visit, the landlord discovered that the barricade he had placed had been removed and the lock on the outside entrance to the area had been changed and he had not been provided with a key.

While giving evidence, the property manager noted that the other tenant has since accepted responsibility for removing the barricade and changing the lock.

By letter of September 4, 2009, the property manager advised the tenants that their actions constituted a breach of the rental agreement and cause to end the tenancy. The letter stated that the tenants would be issued with a Notice to End Tenancy unless their belongings were removed from the area in question and they signed a new rental agreement adding utilities (currently included) as tenants' responsibility.

By reply of September 17, 2009, the tenants advised the property manager that their items had been removed from the area in question and that they had played no role in changing the locks or causing any damage.

During the hearing, the tenants gave evidence that they had not accessed the space after it was boarded up, and had removed their items as directed.

Analysis

Given that the property manager acknowledged that the neighbouring tenant has accepted responsibility for removing the barricade and changing the lock, I find that the subject tenants, while they may have erred in using the space without consent, made reasonable remedy by paying the \$50 storage fee and removing the items in question.

Conclusion

The Notice to End Tenancy of September 29, 2009 is set aside and the tenancy continues under the existing terms.

I find that the tenants are entitled to recover the filing fee from the landlord and hereby authorize and order that they may do so by deducting \$50 from their next rent payment.