

DECISION

Dispute Codes CNC, LRE, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application to cancel a 1 Month Notice to End Tenancy for Cause, for an order to suspend or set conditions on the landlords' right to enter the rental unit, and to recover the filing fee from the landlords for the cost of this application. The parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence. The landlords have the burden of proving that the cause for issuing the notice is justified.

Issues(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Is the tenants' application to suspend or set conditions on the landlords' right to enter the rental unit justified?

Background and Evidence

This month-to-month tenancy began on December 15, 2009. Rent in the amount of \$750.00 per month is payable on the last day of each month, not in advance. At the outset of the tenancy, the tenants paid a security deposit in the amount of \$350.00 and on January 15, 2010, the tenants paid a pet deposit in the amount of \$350.00. The rented unit is a basement suite and the landlords live upstairs.

On February 6, 2010 the landlords served the tenants with a 1 Month Notice to End Tenancy for Cause on the prescribed form dated February 6, 2010, with an expected move-out date of March 6, 2010. The tenants made an application to dispute the notice within the 10 days allowed under Section 48(5) of the *Residential Tenancy Act*.

The landlords allege that on February 3, 2010, the tenants had an argument at about 11:00 p.m. The argument resulted in doors being slammed in the tenants' unit, which

woke up the landlords' daughter. Further, on February 5, 2010, the tenants again had an argument that resulted in a door slamming, as well as on February, 24th, 26th and 28th, when cabinet doors were slammed.

The tenant testified that the noise on February 3 was a result of a domestic dispute between the tenants. He further testified that on February 5, a window in the residence was open, and when he closed the door, it accidentally slammed shut. The tenant also testified that the front door of the unit had a bathroom or bedroom door lock, not an outside door knob. The deadbolt on the door was not useable until the tenant fixed it himself, and that until that time, the door had to be slammed shut to ensure that it locked. The tenant also stated that neither tenant had heard any complaints about noise or slamming doors prior to being served with the Notice to End Tenancy.

The landlords also allege that the tenants stole beer from the front door of the landlords' residence, as well as an electric heater from a vacant house next door. This allegation is disputed by the tenant, was not corroborated by any witnesses or other evidence, and I dismiss that portion of the landlord's evidence.

The landlords also testified that damage has been done to the unit, being damage to a medicine cabinet, as well as curtains and blinds damaged by the tenants' cat. The tenant admitted that his cat had knocked over the medicine cabinet and had damaged the curtains and blinds. The tenant has ordered a new medicine cabinet that has not yet been delivered, and have ordered new blinds and curtains which they intend to install when they move out to prevent the possibility of having to replace them again during or at the end of the tenancy.

The tenant testified that the landlords had complained about a chunk of drywall missing in the bedroom. The piece of drywall was missing when the tenants moved in, but the landlord complained that the door was slammed hard enough to crack it and cause drywall to fly off the wall.

The landlord also provided testimony about the tenants leaving recycling on the adjacent property. The landlords are also concerned about the unit being left in a

messy state. The tenant argued that the garbage bins are located at the side of the house, and they did put their recycling where they should have, but was either blown over or knocked over by an animal and when the tenants were told of the mess, they took immediate action by picking up the recycling and delivering it to the recycle depot themselves. The tenant is also concerned that if the landlord could see that the unit is messy, that strengthens his position that the landlords entered the unit without their knowledge.

The tenant also testified that repairs were being done to the unit, and on February 1, 2010, the drywall repairer attended, but could not finish the job in one day. He told the tenants that he would notify the landlord when he would return. On February 4, 2010, the tenant arrived home from work to find the front door of the unit wide open, a light fixture removed within the unit and not replaced, and drywall dust on their furniture. No one was in the unit and furniture had been moved in the living room. The landlords had not given 24 hours notice to enter the unit, and the tenants were concerned that one of their pets might escape, or an uninvited guest could enter.

Analysis

Firstly, I find that the landlord has not conclusively proven that the tenant has caused significant damage to the rental unit. I accept the evidence of both parties of damage to the medicine cabinet, the curtains and the blinds, but I also accept the evidence of the tenant that he has every intention of repairing those items prior to leaving the rented premises. I don't find that the damage is significant enough to warrant an Order of Possession.

The landlord's 1 Month Notice to End Tenancy for Cause was issued on February 6, 2010 with an expected move-out date of March 6, 2010 stating that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has seriously jeopardized the health or safety or a lawful right of another occupant or the landlord, and that the tenant has caused extraordinary damage to the unit.

However, the *Residential Tenancy Act* also states that:

47 (2) A notice under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the landlord has satisfied the requirement of Section 47(2)(a), but not of Section 47(2)(b). The rent is due at the end of the month, not in advance, which means that the landlord's notice to end the tenancy must have an effective date of March 31, 2010 if it were delivered to the tenant before February 28, 2010. In other words, if rent is due on the 28th of February, the Notice must have an effective date of March 31, 2010 and must be served prior to February 28, 2010.

For the reasons set out above, I find that the tenants' application to cancel the Notice to End Tenancy should be allowed, and I hereby cancel the notice.

Is the tenants' application to suspend or set conditions on the landlords' right to enter the rental unit justified? *The Residential Tenancy Act* is very explicit about the landlord's right to enter the unit, and the tenants' right to change the locks. Section 29 states as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;

- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 70 of the *Act* permits me to suspend or set conditions on a landlord's right to enter a rental unit, or to authorize the tenant to change the locks and prohibit the landlord from replacing them. I find that the landlord has entered the unit and has allowed repairers into the unit without notice to the tenants and contrary to the *Act*, however, if an emergency were to arise, it would be unfair to the landlords to order that the tenant be permitted to change the locks and totally deny access to the landlords. It's important that the landlords understand that the rented unit is the home of the tenants. Should the landlords continue to enter the home of the tenants, the tenants may apply for damages against the landlords for the unlawful entry.

It is also important that the tenants understand that the house is the home of the landlords, and their loss of any right to quiet enjoyment could result in another Notice to End Tenancy for Cause, provided it's done so in accordance with Section 47 of the *Act*.

Conclusion

For the reasons set out above, I hereby order the landlords to comply with Section 29(1) of the *Residential Tenancy Act*, and that the tenants respect the landlords' right to quiet enjoyment.

I further order that the tenants' application to cancel the Notice to End Tenancy is allowed, and the landlords' Notice to End Tenancy is hereby cancelled.

Since the tenants' application has been allowed, I also order that the tenants recover the filing fee from the landlords for the cost of this application, and pursuant to Section 72(2)(a), the tenants may deduct \$50.00 from rent due to the landlords.

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: March 09, 2010.

Dispute Resolution Officer