

DECISION

Dispute Codes O FF
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Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession pursuant to the end of a fixed term tenancy and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking Orders to a) cancel the notice to end tenancy for Landlord's use of the property, b) cancel the notice to end tenancy issued for cause, c) for the Landlords to comply with the Act, d) to suspend or set conditions on the Landlords' right to enter the rental unit, e) to authorize the Tenants to change the locks to the rental unit, f) and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared, gave affirmed testimony, confirmed receipt of the hearing documents and evidence from the other party, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?

Are the Tenants entitled to Orders under sections 47, 49, 62, 70, and 72, of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the Tenants have occupied the rental property since May 1, 1991 and paid a security deposit of \$450.00 on or before May 1, 1991. The property was sold, title transferred to the new owners on May 6, 2010, and on February 25, 2010, the Tenants were served a 2 Month Notice to End Tenancy for Landlord's use effective May 7, 2010. A written tenancy agreement was signed by the Tenants and two of the four Landlords on May 14, 2010, for a fixed term tenancy commencing May 1,

2010 and set to expire on August 30, 2010, at which time the Tenants are required to vacate the rental unit.

Landlords' Witness' Testimony

The Landlords' Witness provided affirmed testimony that he is an insurance agent and currently works with the company who provide the Landlords with insurance on the rental unit. He confirmed that he inspected the rental property on June 3, 2010 at which time there were issues noted that needed to be attended to before the insurance coverage could continue. The Witness argued that he attended the rental unit on June 23, 2010 and found that while the furnace pilot light had been extinguished the pilot light for the "boiler", (hot water tank) was still ignited and there were still possessions stored too close to the tank. He confirmed that he conducted his inspection, made notes, and said nothing to the Tenants or the Landlord's Agent who accompanied him. A letter was later sent to the Landlords advising them the policy will be cancelled. He said that the Landlords contacted him and were advised that nothing could be done to change the situation.

Tenants' Witness' Testimony

The Tenants' Witness testified and affirmed that he is an insurance agent and that he inspected the rental unit on July 6, 2010. He advised the building was built in the late 1970's and the condition and articles being stored are indicative of someone ready to move. He stated there are numerous boxes and materials stored throughout the house. The furnace room is approximately 15' x 15' and there is a metal file cabinet stored beside the hot water tank about 6" away. He also saw boxes stored in the furnace room and are about two feet in front of the hot water tank. The Witness argued that there are some insurers out there who would insure this property however the issue or problem for the Landlords now is their previous insurance had been cancelled and the Landlords are only seeking short term coverage of less than two months. The Witness stated that he found an insurance company that is willing to insure the property for a 1 year term and this information was passed onto the Landlords on July 9, 2010.

Landlord's Agent's Testimony

The Landlord's Agent provided affirmed testimony and confirmed service of notices to inspect the unit, notices of work to be performed at the unit, and notices to end tenancy. The Agent stated that he attended the rental unit with the insurance agent for the first inspection when he noticed articles piled up and boxes up against the furnace and hot water tank. He stated the insurance agent advised that they needed to have the articles

far enough away from the furnace and that it was the Agent's suggestion to the Tenants to turn off the gas to the furnace. He stated that he could not remember how much clearance was between the articles and the furnace and hot water tank. The Agent argued that they had to delay the second inspection to fit into his schedule and when he spoke with the Tenants they said they had complied with his written instructions of what had to be done. The Agent advised that the insurance agent did not say much during the second visit, that he made some notes and then said he would send in his report. The Agent confirmed that he later served the 1 Month Notice to End Tenancy for cause to the Tenants on the date and time noted on the bottom of the notice, in accordance with the Landlords' instructions.

Landlords' Submission

Counsel for the Landlords began his submission by requesting an Order of Possession pursuant to the 1 Month Notice to End Tenancy that was issued on June 25, 2010. He argued that the property was purchased by the Landlords with their intentions to renovate and live in it. While he acknowledges that two of the four Landlords entered into the fixed term tenancy he stated that it was not valid as all four landlords had not consented to the agreement. He confirmed the Landlords then approached the Tenants to enter into a second agreement with all four Landlords' signatures.

The Landlords wanted the Tenants to stop using the water hose for their property down the street and argued that the Tenants did not comply with the Landlords' requests and refused to work reasonably with the Landlords which caused the Landlords' insurance being cancelled which is required for their mortgage. Counsel argued the Tenants have jeopardized the lawful right of the Landlords and the Tenants are the cause for the Landlords not getting insurance coverage.

Landlord (1) stated that he has taken efforts to seek other insurance coverage however he did not have the exact numbers. He argued that all but one company has denied or declined coverage. Landlord (1) confirmed that once coverage has been cancelled it is difficult to get another insurer. He states that from the photos they claim there is a fire risk. He confirmed having a conversation with the Tenants' Witness who first told him he worked for a different company and Landlord (1) later confirmed who their Witness works for. Landlord (1) requested additional information from the Tenants' Witness only to find out the insurer provider he was recommending provided insurance for boats and campers and they would not provide a short term insurance up to August 30, 2010. Landlord (1) argued that his current insurer will reactivate their coverage once they have possession. He stated neither himself nor any of the other Landlords are related to the

insurer and that while they have their life insurance with him their relationship is strictly business.

The Landlords argued that they were not given keys to the rental unit when they purchased the unit. They stated that the keys they received were only for the other side of the duplex which is owned by the Landlords' sister.

Tenants' Submission

Counsel for the Tenants argued that the Tenants have occupied the rental unit for over nineteen years and had had no previous problems with insurance. He argued that it was not until shortly after the Tenants entered into the fixed term agreement on May 14, 2010, and then refused the new agreement with a different end date, that a 2 Month Notice to End Tenancy for Landlords use, was issued on May 17, 2010. Then May 25, 2010 the notice for exterior work was issued which did not comply with the Act. Work that was supposed to take one day lasted for over a week which was followed by the insurance inspections and numerous interruptions by the Landlords.

Both Tenants provided statements about how they had discussions with the Landlords where they asked what the Landlords concerns were and what was required for the insurance inspector and that the Landlords were unable to provide them with answers. The Tenants argued that they have attempted to work with the Landlords, that they complied with the written request and turned off the gas to the furnace, that there was never any mention of storage around the hot water tank, and that the storage bin was in the driveway prior to the Landlords purchasing the property. The Tenants confirmed they received written notification from the municipality that the storage bin is to be removed no later than September 1, 2010, and a municipal inspector has attended the unit and confirmed that the manner in which items are currently stored in the driveway area meet with their requirements. They also confirmed that they no longer use the rental unit water at their property a few doors down.

Counsel argued that the true issue is storage around the hot water tank and it was not communicated to the Tenants that there was additional requirements to comply with. He contends that the onus lies with the Landlords to deal with deficiencies. He wanted to point out that the insurance agent implied that he could reinstate their insurance simply by having an Order of Possession issued and questioned if that was truly the case, why is it that the insurance could not be reinstated if the deficiencies were rectified.

Again there was no communication to the Tenants that deficiencies were present or what was required to rectify the situation.

The Tenants are seeking an Order to have the Landlords comply with the Act and provide reasonable notice and times of any work to be performed. The Tenants argued that the Landlords have entered the rental unit during their absences without proper notification and question why they continue to enter and invade their privacy. The Tenants argued that the Landlords were at the unit repeatedly until the Tenants specifically asked them not to come over to their side of the duplex anymore.

Closing Summations

The Landlords Counsel argued that the Landlords have provided notice in accordance with the Act and have never entered the unit without prior notice or permission. He argued that none of the Landlords have a key to the rental unit and while they spend time at the other side of the duplex, which is owned by the Landlords' sister, they do not invade on the Tenants' privacy.

Tenants' Counsel argued the only issue is the Landlords' insurance coverage and while he has requested documentation from the Landlords containing the particulars of the reasons why the premises is uninsurable, their underwriting criteria, and a copy of the cancelled insurance policy, he has never received these so his clients have not been given the opportunity to rectify the situation. Counsel referred to the photographs and documentary evidence to support that the Tenants have complied with the list of items that were to be remedied.

Analysis

All of the testimony and documentary evidence was carefully considered.

Upon careful review of the tenancy agreement I find that the two Landlords who entered into the agreement on May 14, 2010, acted as agents for the other two owners of the property. Therefore I find the fixed term tenancy agreement to be valid and of full force and effect from May 1, 2010 until the expiry date of the fixed term on August 30, 2010, at which time the Tenants must vacate the rental unit in accordance with the agreement. Rent is payable on the first of each month in the amount of \$1,001.00 and the security deposit of \$450.00 which was paid in May 1991 is currently being held in trust by the new property owners.

Section 49(2)(c) of the Act provides that a landlord may end a tenancy if the landlord wishes to occupy the unit by giving notice to end the tenancy effective on a date that is not earlier than the date specified as the end of the tenancy. Therefore, in accordance with section 53 of the act, the effective date on the 2 Month Notice to End Tenancy for Landlord's Use issued May 17, 2010, would self correct to August 30, 2010. Upon further review of the 2 Month Notice I find that with the self correcting effective date that the Notice has been issued in accordance with section 49 of the Act and is of full force and effect.

Having found the 2 Month Notice to be issued in accordance with the Act, the Tenants are therefore entitled to compensation of an amount equal to one month's rent, in accordance with section 51 of the Act, and may choose to withhold the amount from their last month's rent.

In the presence of the insurers concerns of storage around the hot water tank, I hereby order the Tenants to ensure storage of all articles near the hot water tank be stored in accordance with the provincial safety regulations effective immediately upon receipt of this decision and for the duration of this tenancy. The Tenants are ordered to allow the Landlord's Agent, (the person listed as the first attendee for the Landlord on the cover page of this decision), access to the rental unit for a one time inspection at a mutually agreed upon date and time so that this Agent may take photos of the hot water tank storage area to show the Landlords the Tenants have complied with this Order.

Section 47(1)(h)(ii) of the Act states that a landlord may end a tenancy by giving notice that the Tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. I do not accept the Landlords' argument that the Tenants have refused to work reasonably with the Landlords which has interfered with the Landlords' ability to secure insurance. In this case the evidence supports the Tenants' arguments that they dealt with all the issues indicated on the written notice to comply, dated June 4, 2010, and that there was no communication about a problem with storage around the hot water tank.

I find the Landlords have failed to provide sufficient evidence to support that they did what was reasonable to mitigate their loss of insurance. The current insurer stated that insurance coverage could be reinstated once an order of possession was issued yet he did not provide the Landlords with an opportunity to correct their oversight on the storage around the hot water tank. For these reasons I find the Landlords have failed to prove that the 1Month Notice to End Tenancy has been issued in accordance with section 49 of the Act; therefore I hereby cancel the 1 Month Notice.

On a balance of probabilities I accept the Tenants' arguments that the Landlords have entered the rental unit and property without proper notice, that they have performed an excessive amount of exterior renovations without proper notice, and that the opportunity presents itself for the intrusions to continue as the Landlords visit their sister who owns the other side of the duplex.

I do not accept the Landlords' argument that no one has a key to the rental property except for the Tenants, however if that were truly the case, the Tenants' request to change the locks would therefore have no effect on the Landlords. As noted above I am satisfied that the Landlords have or are likely to enter the rental unit in contravention of section 29 of the Act, therefore in accordance with section 70 of the Act, I authorize the Tenants to change the locks or to re-key the locks to the rental unit at their own expense. This change is deemed to be an upgrade to the unit and must be done in a manner that fits the current décor of the rental unit which will stay with the unit even after August 30, 2010, the end of the tenancy. The Tenants are ordered to provide the Landlords with the keys to the rental unit upon completion of the move-out inspection at the end of the tenancy.

I further Order that the Landlords' right to enter the rental property is hereby suspended, in accordance with section 70 of the Act, until August 30, 2010 at 1:00 p.m. To clarify, this Order stipulates that, except for the Agent's one time visit to inspect the storage around the hot water tank as ordered above, none of the four Landlords or any Agent appointed by any of the Landlords may attempt to gain access to the exterior property or the interior of the rental unit until August 31, 2010, at 1:00 p.m. In considering that the Landlords' sister owns the other side of the duplex, I instruct the Landlords to resist from interacting with the Tenants while they are at their sister's property.

Having restricted the Landlords' access to the rental property, I hereby Order all renovations to the rental property to cease immediately and for the duration of this tenancy.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued June 25, 2010, is HEREBY CANCELLED and is of no force or effect.

A copy of the Landlords' decision will be accompanied by an Order of Possession effective **August 30, 2010 at 1:00 p.m.** This Order must be served to the Tenants and may be enforced in Supreme Court as an Order of that Court.

The Landlords and Tenants are HEREBY ORDERED to comply with my Orders, as listed above, and to comply with the *Residential Tenancy Act*, in accordance with section 62 of the Act.

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: July 14, 2010.

Dispute Resolution Officer