



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenants received the notice to end tenancy on May 19, 2010. The notice alleges that the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk and have engaged in illegal activity that has jeopardized the lawful right or interest of another occupant or the landlord.

The landlord testified that the tenants had encouraged a pigeon to make a nest on their balcony and that this posed a significant risk to the landlord's property as pigeon droppings were affecting other units and endangering the health of these and other tenants. The landlord testified that the tenants refused entry into the unit on May 19 despite having been served with a 24 hour notice of entry and that in so doing, they jeopardized the lawful right of the landlord to enter the unit.

The tenants testified that they did not encourage the pigeon to build a nest on their balcony and that when the landlord advised them in a letter dated May 18 that they had

to remove the nest and clean the balcony, they did so. The tenant F.N.S. testified that when the landlord attempted to enter the rental unit on May 19, she had been under the impression that the time for entry had been rescheduled. Although the landlord and her witness testified that the landlord knocked on the door repeatedly before using a key to gain entry, F.N.S. and her witness testified that they did not hear the landlord knock but only realized the landlord was there when the door began to open. The door was secured by a chain and the landlord and her witness testified that F.N.S. screamed at her, stating that she could not enter. F.N.S. testified that she was nursing her infant child at the time the landlord attempted entry and that she was startled because she had not heard the landlord knock prior to opening the door. The landlord testified that if the tenant had told her that it was an inconvenient time to enter, she would have arranged to enter at a different time, but no such communication was made.

The parties both gave testimony regarding the tenants' dishwasher, which the landlord claimed is prohibited under the terms of the tenancy agreement and for which the tenants claim to have received permission from a previous property manager.

Analysis

The landlord bears the burden of proving that she has grounds to end the tenancy. I am not persuaded that the tenants encouraged the pigeon to nest on their balcony and I accept that the tenants cleaned the balcony within a reasonable period after having been instructed to do so. I accept that the tenancy agreement prohibits the installation of a dishwasher without the written permission of the landlord and that the tenants have acknowledged that they never received permission in writing. However, I am unable to determine how the breach of this term of the tenancy agreement has jeopardized the health, safety or lawful right of the landlord or how it has placed the landlord's property at significant risk. The landlord is free to bring an application for an order that the tenants comply with the tenancy agreement. After having received such an order, the landlord may issue a further notice to end tenancy for cause if the tenants fail to comply with the order.

Although the notice to end tenancy in part alleges that the tenants have engaged in illegal activity, I find that while refusal to admit the landlord to the rental unit contravenes the Act, I am unable to find that it can be characterized as a serious violation of the law, which is required under Residential Tenancy Policy Guideline #32. The landlord has also alleged that the refusal to grant the landlord entry seriously jeopardized her lawful right or interest. I am satisfied that the tenants did not have the right to deny the landlord entry into the unit. However, I am unable to find that one such refusal can be characterized as having placed the landlord's lawful right or interest in *serious* jeopardy. Multiple refusals to grant the landlord entry after the landlord has complied with the Act may well form grounds to end the tenancy but I find that one infraction is insufficient.

I find that the landlord has failed to establish grounds to end the tenancy.

Conclusion

I order that the notice to end tenancy dated May 19, 2010 be set aside. The notice is of no force or effect and the tenancy will continue.

Dated: July 12, 2010
