



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC

Introduction

This hearing was held in response to the tenants Application to cancel Notice ending tenancy for cause and to recover the cost of the filing fee for this hearing from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me

Issue(s) to be Decided

Should the 1 month Notice ending tenancy for cause issued on October 5, 2010, be cancelled?

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenants were required to vacate the rental unit on November 5, 2010. The reasons stated for the Notice to End Tenancy were that tenants have seriously jeopardized the health or safety or lawful interest of the landlord; put the landlord's property at significant risk; breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so and that the tenants have failed to pay a pet deposit within 30 days as required by the tenancy agreement.

The tenancy commenced June 1, 2010; rent is due on the first day of each month. The home is approximately forty years old; the tenants reside in a basement unit and the landlord lives in an upper unit.

The landlord gave the tenants permission to install new kitchen cabinets and the tenants also replaced the portable dishwasher with a built-in unit. When the landlord saw that the tenants were installing the built-in, she asked the tenant if he was qualified to complete such an installation and was told that he was. Since the dishwasher was installed the electrical breaker trips, as the system cannot handle the running of the upper and lower dishwashers, which are apparently on the same circuit. The tenant

confirmed that the portable dishwasher, which ran on the same circuit as the built-in now does, was also 120 volt.

The landlord had an electrician inspect the rental unit to ensure that the tenants had not placed the property at risk, as they had completed electrical work which resulted in the breaker tripping. Both parties confirmed that the electrician found no reason to suspect that the property was at risk as a result of any work completed by the tenant. The landlord confirmed that the electrical system is approximately seventeen years old and that upgrades to the breakers will be arranged.

The tenancy agreement allows the tenants to have a pet if prior written permission was obtained from the landlord. At the start of the tenancy the tenants informed the landlord that they would occasionally care for a small dog and that they were told prior written permission must be granted.

At the end of September the landlord discovered that the tenants were caring for the dog and she had not given prior written permission. On October 1, 2010, the landlord issued a letter to the tenants giving them until October 4 to remove the dog and that failure to do so by that date would result in her asking the tenants to move out. A copy of this letter was submitted as evidence by the landlord.

On October 2nd the landlord and the male tenant met and some terms were discussed that would allow the tenants to have the dog remain on the property until October 28. The tenants gave the landlord a letter, a copy of which was submitted as evidence, in which they apologized for having the dog on the property; offering a pet deposit and indicating that the dog would be gone on October 28. They also promised to take the dog off the property when it required exercise.

The tenants submitted a copy of an October 4, 2010, document issued by the landlord and given to the tenants on that day. This document provided permission for the dog to remain on the property, required payment of a pet deposit and set out other conditions related to the tenancy. The tenants did not immediately sign this document as they wished to discuss it first.

The next day, October, 5, 2010, the landlord issued the Notice ending tenancy; the tenants immediately disputed the Notice and waited for this hearing and a decision in relation to the reasons for eviction.

The landlord stated she did not wish to provide testimony in support of the pet deposit portion of the Notice. The tenants submitted that a pet deposit had been requested based on the discussion they had with the landlord on October 2, 2010.

The parties discussed an issue in relation to storage of a fridge; the tenants have replaced the smaller fridge provided by the landlord, with a larger unit. The tenancy agreement prohibits removal of appliances from the unit. The landlord accesses a storage room that is in the tenant's unit and the tenants are willing to put the fridge in that room if the landlord removes some of her belongings.

The tenants stated that the landlord repeatedly enters their rental unit so she may access her portion of a storage area that is in their unit.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenants have seriously jeopardized the health or safety of the landlord, put the property at significant risk, breached a material term of the tenancy or failed to pay a pet deposit.

During the hearing I told the parties that the portion of the Notice relative to health and safety and placing the property at risk were not proven by the landlord. The electrician did not issue a warning or any instructions indicating that the tenants had caused a risk. I find that the installation of a dishwasher, from the evidence before me, did not place any additional burden on the wiring than had previously existed with the use of the portable dishwasher. The landlord is going to proceed to have the wiring upgraded; providing a solution that will allow the tenants and landlord use of the appliances without the breaker tripping.

The tenants did bring a dog to the property without first obtaining the written consent of the landlord. However, from the evidence before and on the balance of probabilities, I find that the landlord did agree in writing to allow the dog to remain, with certain conditions. The failure of the tenants to immediately sign the written agreement issued by the landlord on October 4, 2010, resulted in the landlord issuing the Notice the next day.

I find that the landlord failed to provide the tenants with a reasonable period of time to respond to the October 4 document. I also find that the landlord gave her expressed approval that the dog remain, should the tenants pay a pet deposit. This is supported by the reason indicated on the Notice; that the tenants had failed to pay a pet deposit. If the landlord had objected to the presence of the dog and considered it's presence a material breach of the tenancy, I find that the expectation of a pet deposit payment was in direct contradiction to that position.

If the fridge is ultimately damaged as a result of being exposed to the weather or dampness, there is a possibility the tenants could be found responsible for that damage. If the tenants have an interior storage area I would suggest that the fridge be placed there in order to avoid damages that could result in costs to the tenants. The fridge remains on the residential property and I find its removal to a shed in the yard does not constitute cause to end the tenancy.

In relation to the issue of entry by the landlord into the tenant's rental unit; a landlord possesses restricted access to a rental unit, as provided by section 29 of the Act:

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).

The parties may come to a mutual agreement for entry by the landlord; in the absence of agreement, the landlord should exercise caution in relation to entry, which must be reasonable and not interfere with the quiet enjoyment of the rental unit.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that she had grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy, dated October 5, 2010, and I order that this tenancy continue until it is ended in accordance with 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: November 04, 2010.

Dispute Resolution Officer