



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, for an Order that the Landlord comply with the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Has the Landlord failed to comply with the Act or a term of the tenancy agreement?

Background and Evidence

This fixed term tenancy started on July 1, 2010 and expires on July 1, 2011. The Tenants entered into the tenancy agreement with the former Landlord (who is the current Landlord's spouse) on July 1, 2010 and she resided in the basement suite of the rental property at that time. On or about October 3, 2010, the former Landlord moved out of the rental property and the current Landlord took over as the Landlord.

On October 16, 2010, the Landlord served the Tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property however no box was checked off on the 2nd page of the Notice. The Landlord argued that he did not authorize his spouse to enter into a tenancy agreement with the Tenants however he admitted that she is a joint owner of the rental property. The Landlord said he gave the Tenants a 2 Month Notice because they have objected to his presence on the rental property and he wants the whole house for his own use. The Tenants argued that the Landlord is not entitled to end the fixed term tenancy for this reason.

The Tenants said that prior to moving in, their former Landlord told them that they could take the rental unit furnished or unfurnished. The Tenants said they told their former Landlord that they had furnishings and would have to get rid of them if they took the rental unit furnished. The Tenants claim that their former Landlord told them that they could have the furnishings in the rental unit because she did not need them and would end up disposing of them. In reliance on this agreement, the Tenants said they gave away many of their furnishings. The Tenants said that their former Landlord and their

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current Landlord did an inspection of the rental unit on October 3, 2010 and at that time their current Landlord was asked by his spouse if there were any furnishings he wanted but he said no, he did not want any memories. The Tenants said that their current Landlord suggested documenting what furnishings would stay at the end of the tenancy and the Parties signed a document that day that said "all mirrors, table and ottoman stays with the house when the tenants leave." The Tenants said that the Landlord showed up at the rental unit unannounced on October 28, 2010 and told them that they would have to leave all the furnishings in the rental unit at the end of the tenancy.

The Landlord said he was not sure if his spouse gave the furnishings to the Tenants or not but argued that if she did, she was not entitled to because they belonged to him. The Landlord admitted that he signed the document on October 3, 2010 stating which furnishings would remain in the rental unit at the end of the tenancy but argued that he believed his spouse was going to remove certain furnishings (such as a bed, side tables and a couch) and didn't do so.

The Tenants claimed that the Landlord also showed up at their door unannounced on October 16, 2010 when he served them with the Notice to End Tenancy. The Tenants argued that the Landlord frequently comes to the rental property without any advance notice to them. The Landlord denied that he shows up at the rental unit without notice to the Tenants. The Landlord argued that it is his right to attend the rental property whenever he wants to make sure it is secure and only needs to give the Tenants notice if he is going to enter the rental unit.

Analysis

RTB Policy Guideline #30 says that neither a landlord nor a tenant can end a fixed term tenancy before the end of that term except for cause or by agreement of both parties. This means that "a Landlord cannot give notice for owner occupancy or purchaser occupancy that will have the effect of ending a fixed term tenancy before the end of the fixed term." Consequently, even if the Landlord's 2 Month Notice had been completed properly by indicating the reason on the 2nd page (and I find that it was not), it still would be unenforceable because the Landlord is not entitled to end the fixed term tenancy for his own use before July 1, 2011. Although the Landlord argued that his spouse was not entitled to enter into the tenancy agreement with the Tenants, his evidence that she is a joint owner suggests that she was entitled to enter into the tenancy agreement and I find that it is enforceable. As a result, I find that the 2 Month Notice to End Tenancy dated October 16, 2010 is unenforceable.

The Tenants argued that they were given certain furnishings by the former Landlord, that the current Landlord was aware of that agreement and was a party to it but that he

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is now seeking to break that agreement. The Landlord argued that his spouse was not entitled to give away any furnishings and he did not agree to it. However, I find that the Landlord was present with his spouse and the Tenants on October 3, 2010 when he was asked if he wanted any of the furnishings and he recommended making a list of those the Tenants were specifically not allowed to retain at the end of the tenancy. I also note that the Landlord was given an opportunity to call his spouse as a witness during the hearing to corroborate his position, but he elected not to do so. Consequently, I find that it was not only the former Landlord but also the Landlord in this matter who made this agreement and therefore I do not give any weight to the Landlord's argument(s) that he did not agree to give the Tenants the furnishings or that his spouse did not have any authority to give these items away. Accordingly, I find that there was an agreement that the Tenants would be entitled to keep all of the furnishings (except those specifically excluded in writing) in the rental unit.

Section 29 of the Act says that a Landlord must not enter a rental unit for any purpose unless he gives the Tenants a minimum of 24 hours written notice stating the purpose for the visit (which must be reasonable) and the date and time of the visit. Section 28 of the Act says that a Tenant is entitled to quiet enjoyment including but not limited to the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit and use of common areas free from significant interference.

Consequently, I find that the Landlord is correct when he stated that he only needs to give the Tenants written notice if he will be entering the rental unit. However, given the provisions of s. 28, if a Landlord attends a rental property (and in particular common areas such as a yard) at unreasonable times or so frequently that it breaches a Tenant's right to quiet enjoyment, then a Landlord may become liable for damages for a breach of that right (in the form of a rent rebate). In other words, although a Landlord has a right to attend a rental property to ensure it is properly maintained and secured, he must ensure that he does so only at reasonable times and intervals. In this case, I find that there is insufficient evidence that the Landlord has not complied with s. 29 of the Act and the Tenants' application to order him to do so is dismissed with leave to reapply if there are future infractions.

Conclusion

The Tenants' application is granted on the above-noted terms. As a result, I find that the Tenants are entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding from the Landlord and I order that they may deduct this amount from their next rent payment when it is due and payable to the Landlord.



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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 18, 2010.

Dispute Resolution Officer