Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, OLC, PSF, LRE, LAT, FF

Introduction

This matter dealt with an application by the Tenants to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Tenants also applied for an Order that the Landlord comply with the Act, for an Order that the Landlord provide services and facilities agreed to, for an Order suspending or placing conditions on the Landlord's right to enter the rental unit, for an Order permitting the Tenants to change the locks, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that this part of the Tenants' application is unrelated to their application to cancel the Notice to End Tenancy and as there was insufficient time at the hearing to deal with this part of the Tenants' application, it is dismissed with leave to reapply.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on February 1, 2010 and expires on January 31, 2011. Rent is $1,200.00 per month payable in advance on the 1st day of each month. On October 23, 2010 the Landlord served the Tenants in person with a One Month Notice to End Tenancy for Cause dated October 23, 2010. The grounds stated on the Notice were as follows:

- The Tenant or a person permitted on the property by the Tenant has:
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - Put the Landlord's property at significant risk;

- The Tenant has not done required repairs of damage to the unit; and

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord resides on the upper floor of the rental property. The Landlord said that she discovered in April 2010 when the Tenants were away for a weekend that they had not locked their exterior door. The Landlord said she sent the Tenants an e-mail and followed up with them in person the importance she placed on locking the doors for the safety of herself and the rental property and the Tenants agreed that they would keep it locked. The Landlord said she feared that an unauthorized could gain access to her living quarters by removing the hinges from a common door in the rental unit that was kept locked. The Landlord said she discovered on October 6, 2010 that the Tenants had not locked their door but admitted that one of them was home sleeping at the time. The Landlord said she addressed this issue again with the Tenants by e-mail that day and they admitted that they did not routinely lock the exterior door. The Landlord admitted that she was unaware if the Tenants had not locked the door after this date but said the Tenants told her on October 16, 2010 that it was their right to decide whether to lock the door or not.

The Tenants claimed that the door to the rental unit had no lock for the first 3 weeks of the tenancy (which the Landlord denied) and then for one day at the end of October 30, 2010 when the lock was replaced. The Tenants admitted that they often left the door unlocked for short periods of time while walking their dog but claimed that because they worked different shifts, one of them was home 90% of the time. The Tenants also claimed that there were problems locking the door at times. The Tenants said that although it is a safe neighbourhood, they now ensure that the door is locked.

The Landlord also claimed that the Tenants' vehicle leaked antifreeze on the driveway which could have injured her dog. The Landlord said she brought this to the Tenants' attention and they assured her they would repair the leak by October 12th but did not do so until October 18th. The Landlord admitted that the Tenants took steps (as per her instructions) to clean up the leaked antifreeze but claimed that they only did this three times which was inadequate over a period of 12 days and as a result, she and her dog could not use that area of the yard. The Landlord further claimed that the Tenants left an oil stain on the driveway and they have not removed it although she admitted they followed her instructions for trying to remove it.

The Landlord further claimed that the Tenants were in breach of a material term of the tenancy agreement which contains a term authorizing them to have only one dog and two cats. The Landlord said the Tenants brought a second dog to the rental unit in September 2010 and she gave them written notice on October 17, 2010 to remove it within a week. The Tenants claim that the Landlord gave them her verbal consent before they purchased the dog. The Tenants said they were looking for a temporary

home for the 2nd dog to comply with the Landlord's notice but once they got the One Month Notice decided that they would probably be leaving in any event so decided not to get rid of the 2nd dog.

The Landlord also claimed that the Tenants were in breach of a material term of the tenancy agreement because they failed to advise her of needed repairs. In particular, the Landlord claimed that the first time she heard of excess moisture and mould in the rental unit was in the Tenants' application for dispute resolution. However, the Landlord admitted that the Tenants advised her about high humidity in the rental unit at some point in September 2010 and asked for a dehumidifier. The Landlord also admitted that the Tenants discovered a leak in the hot water tank three weeks later and advised her about that as well as pointed out what appeared to be a fungus growing behind it. The Landlord further admitted that the Tenants later advised her about moisture under the kitchen sink however she denied that any mould was found there and claimed it was pancake mix and dirt.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that there is insufficient evidence that the Tenants have failed to make repairs of damage to the rental unit. The Landlord claimed that the Tenants were responsible for an oil spot on the driveway which the Tenants denied. The Landlord also claimed that the Tenants were responsible for an antifreeze leak which the Tenants (and the Landlord) admitted was rectified by October 18, 2010 (prior to the Notice to End Tenancy being issued). Consequently, I find that there is insufficient evidence to satisfy this ground of the Notice.

I find it was a material term of the tenancy agreement that the Tenants required the written agreement of the Landlord to have more than one dog however I find that the Landlord waived reliance on that term. In particular, in her written submissions, the Landlord said, the Tenants "informed me they were bringing home a puppy with 4 days notice... I was not asked permission... I said I would give it a try, but did not want another puppy in the suite and that I planned to get a second dog and only 3 were allowed on the property according to the West Van bylaws. I tried for a month but it did not work out." In the circumstances, I find that the Landlord could have refused to allow the Tenants to bring a second dog into the rental unit in reliance on the term of the

tenancy agreement however she failed to do so and cannot now revoke her consent and seek to rely on this term of the tenancy agreement.

I also find that there is insufficient evidence that the Tenants have failed to report needed repairs to the Landlord. The Landlord admitted that the Tenants approached her about elevated humidity levels in the rental unit 3 weeks prior to discovering the leak in the hot water tank in September. The Landlord also admitted to seeing the fungus behind the hot water tank but claimed it appeared to her to be sea kelp. The Landlord further admitted that the Tenants advised her there was a lot of moisture under the kitchen sink but denied that what the Tenants showed her was mould and claimed instead that it was pancake mix and dirt. Consequently, I find that the evidence shows that the Tenants did bring humidity and mould concerns to the Landlord's attention and therefore she cannot rely on this ground of the tenancy agreement.

The Landlord said that her greatest concern was that the Tenants failed to ensure that their door was locked when they were not home despite her stressing the importance of this to them in April 2010. The Landlord said that although she was mistaken about the Tenants leaving without locking the door on October 6, 2010, they admitted to her in an e-mail that they had been leaving it unlocked because they were having trouble locking the lock with their key. The Landlord admitted that she too could not lock the lock with her key on October 30, 2010 and had to replace it. The Landlord also admitted that she (personally) had *not* found the rental unit unsecured since April, 2010 but said she was alarmed at the Tenants' suggestion on October 16, 2010 that it was their business whether they locked their door or not.

Despite the Landlord's claim that there had been a home invasion in the area 12 years prior and that a generator had been stolen from the backyard of a neighbour in March of 2010, there was no evidence that the rental property is in a high crime area or that the Tenants' failure to lock their door for short periods of time posed a risk to the Landlord's safety. However, given that the Landlord also resides in the rental property, I find that it was a reasonable for her to request in April that the Tenants lock their door when they were not home. Fairness requires, when a Landlord is seeking to evict a Tenant for failing to comply with such a request, the Landlord must put the Tenant on notice that the tenancy will be in jeopardy if the conduct continues. The Landlord's e-mail of April 19, 2010 does not do this; instead the Landlord advised the Tenants to purchase a new lock if they had difficulty with the existing one. Similarly in her e-mail of October 6, 2010, the Landlord did not advise the Tenants that their tenancy could be in jeopardy for failing to lock their door but instead she advised them to discuss the matter with her if they thought it was an unreasonable request.

Given that the Landlord did not put the Tenants on notice that their failure to lock their door at all times when not home would result in the tenancy being ended, given also

that there is evidence that there were problems with the lock from April until October, 2010 and given further that there is no evidence that the Tenants failed to lock their door when they were not home in October, I find that the Landlord cannot rely on this ground of the Notice. However, the Tenants are now on notice that any further failure on their part to lock the rental unit door when they are not home may result in the tenancy ending without further notice.

For all of the above reasons, I find that there is insufficient evidence to support the grounds set out on the One Month Notice to End Tenancy for Cause dated October 23, 2010 and it is cancelled. As the Tenants have been successful on this part of their application, I find that they are entitled to recover from the Landlord the $50.00 filing fee for this proceeding and I order pursuant to s. 72 of the Act that they may deduct that amount from their next rent payment when it is due and payable to the Landlord.

Conclusion

The Tenants' application to cancel the One Month Notice to End Tenancy for Cause dated October 23, 2010 is granted. The Tenants' application for an Order that the Landlord comply with the Act, for an Order that the Landlord provide services and facilities agreed to, for an Order suspending or placing conditions on the Landlord's right to enter the rental unit, for an Order permitting the Tenants to change the locks, for compensation for damage or loss under the Act or tenancy agreement is dismissed with leave to reapply.

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 16, 2010.

Dispute Resolution Officer