



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, CNR, O, OLC, RP

Introduction

This matter dealt with an application by the Tenants to cancel Notices to End Tenancy for unpaid rent and for cause, to have the Landlord comply with the Act, for make repairs to the property and other considerations.

The Tenants said they served the Landlords with the Application and Notice of Hearing (the "hearing package") by personal deliver on December 22, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlords and Tenants in attendance.

During the Hearing the Dispute Resolution Officer informed the Tenants that the application is to contest the Notices to End Tenancy and the application for repairs to the property, to have the Landlords comply with the Act and other consideration are separate and unrelated dispute to this application. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) says a Dispute Resolution Officer may dismiss unrelated disputes within an application. The Tenants' applications for repairs to the property, to have the Landlord comply with the Act and other considerations are dismissed with leave to reapply.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notices to End Tenancy?

Background and Evidence

This tenancy started on March 15, 2009 as a verbal month to month tenancy. Rent is \$700.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$350.00 in March, 2009. The Landlord said the Tenant has unpaid rent of \$700.00 for January, 2011. The Tenant said they have the rent money and they are willing to pay it, but they wanted to have the hearing first.

The Tenant said the Landlord served her with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated December 15, 2010. The Tenant said she paid the rent

and received a receipt for payment of the rent on December 15, 2010 prior to the Landlord serving her the 10 day Notice to End Tenancy for non payment of rent for December, 2010. The Tenant said the Landlord is wrong in issuing this Notice as the rent was paid and she submitted the receipt as proof that the December, 2010 rent was paid prior to receiving the Notice to End Tenancy for Unpaid Rent. The Landlord said this was correct that she was paid the December rent and she still issued a Notice to End Tenancy for Unpaid for the December, 2010 rent.

The Landlord said she issued the 1 Month Notice to End Tenant for Cause as the Tenants were smoking in the unit and on the grounds, the Tenants would not give the Landlords access to the rental unit and the Tenants were loud and disrupted the Landlord's peaceful enjoyment of the property. The Landlord submitted written evidence and photographs and a flash drive with videos on it as evidence to support the Notice to End Tenancy. The Landlord did not provide a device to view the flash drive on as is required; therefore the flash drive was not viewed by the DRO. The Landlord said they had called the fire department on January 13, 2010 for a smoke incident in the rental unit and the fire department told the Landlord that the smoke detector was not working and should be repaired. The Tenant said they told the Landlord at the start of the tenancy that the smoke detector was not working and the Tenant said the Landlord said he would repair it. The Tenant said the smoke detector still does not work. The Landlord said the verbal tenancy agreement said it was a no smoking rental in the unit and on the grounds. The Tenant said it was only no smoking in the unit and they have not smoked in the unit. They do smoke but it is outside by the front door with the door closed.

The Landlord said the Tenants do not allow them entry into the rental unit. The Tenants' said that they have never had proper notice by the Landlord to enter the unit and they do not like the Landlord coming in unannounced. The Landlord said they have given the Tenants written Notice for the right to enter the unit once during the tenancy. The Tenants' said they had never had written notice from the Landlord to enter the unit.

The Landlord said the Tenant is loud and has disturbed the sleep of her children. The Tenant said they are not loud and do not have a stereo that they play loudly. Tenant continued to say the Landlord's children are teenaged and they make as much noise or more noise than the Tenants do.

Analysis

There was much contradictory evidence give by both the Landlord and the Tenant. The Landlord said they gave the Tenants receipts for the rent payments, but it was the Tenants who purchased the receipt book and completed the receipts for the Landlord to sign. As well the Landlord did not keep a copy of the receipts, but the Tenant did have

copies to show when rent payments were made. I accept the Tenants' testimony with respect to the receipts for rent payments from April 2010 to December 2010, that most rent payments were made on time. Both the Landlord and the Tenant agreed the December, 2010 rent payment was made prior to the Landlord serving the 10 Day Notice for Unpaid Rent, therefore I find the 10 Day Notice for unpaid Rent is invalid and I dismiss the 10 Day Notice to End Tenancy for Unpaid Rent dated December 15, 2010.

As well, the burden of proving a claim lies with the party issuing the Notice to End Tenancy and when it is just the Landlords' word against the Tenants' word the burden of proof is not met. There must be substantial evidence to establish grounds to evict Tenants for Cause. The testimony regarding smoking in the unit given by the Landlord did not establish that the Tenants smoked in the unit and as there is no written tenancy agreement that defines the terms of the tenancy, I find the Landlord has not proven grounds to warrant a Notice to End the Tenancy for smoking. In addition the noise issues were disputed and the Landlord did not provide evidence that established proof that the Tenants were abnormally loud, therefore I find the noise issue has not been established to proof grounds for a Notice to End Tenancy.

Section 29 of the Act says that a Landlord must give the tenant written notice at least 24 hours prior to entry to the rental unit. The Landlord could not provide the written notices and the Tenant said they have never had a written notice from the Landlord, therefore grounds to end the tenancy for denying the Landlord right of entry has not been established.

I find for the Tenant and grant their application to Cancel both Notices to End Tenancy; the 10 Day Notice to End Tenancy for unpaid Rent dated December 15, 2010 and the 1 Month Notice to End Tenancy for Cause dated December 15, 2010.

Conclusion

I find for the Tenant and I order the Notices to End Tenancy dated December 15, 2010 be cancelled and the tenancy will continue as is.

I dismiss the Tenants' claims for the landlord to comply with the Act, repairs to the property, monetary claims for damages and other consideration as separate issues outside of this hearing and I give the Tenant leave to reapply on these issues.

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: January 17, 2011.

Residential Tenancy Branch