



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MNDC

Introduction

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

Issues to be Decided

Should the notice to end tenancy be set aside?
Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that on March 24, 2011 the tenants were served with a one month notice to end tenancy for cause (the "Notice"). The Notice alleges that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, caused extraordinary damage to the unit and have not done required repairs of damage to the site.

The parties agreed that in December 2010, the tenant was involved in an altercation with D.S., a houseguest who is also the landlord's nephew, in which some damage occurred in the rental unit. The landlord's television was damaged during this incident. The landlord alleged that there was other damage done to the rental unit, including holes having been made in walls and damage to a hot water tank. The landlord repaired the hot water tank but claimed that the tenant was responsible for performing other repairs. The tenant testified that he had repaired all damaged save the damage to the landlord's television. The landlord acknowledged that he has not been in the rental unit to determine whether repairs have been completed.

After the altercation in December, the tenant was ordered not to attend at the rental unit. The landlord wrote a letter to the court on behalf of the tenant in which he advised that

he wished to continue the tenancy agreement with the tenant and described the tenant as an “excellent renter.”

The landlord alleged that the tenant has 2 pit bulls despite having permission to have just one, that he has failed to pick up his dogs’ excrement from the back yard and that he has left items sitting outside for months without taking those items to the garbage. The tenant acknowledged that he has two dogs and that he is not always diligent in picking up after them. He stated that the items outside the rental unit belong to D.S. and insisted that it is the landlord’s responsibility to remove those items.

The landlord claimed that he is unable to inspect the rental unit because the tenant does not answer his telephone calls. The tenant advised that his telephone has been disconnected for some time.

The tenants seek a monetary award for \$600 which at the hearing they stated was to compensate them for the cost of removing items from the house at the beginning of the tenancy, repairing the hot tub and hiring a pest control company.

Analysis

The landlord bears the burden of proving that he has grounds to end the tenancy. I find that because the landlord has not inspected the rental unit and cannot definitively state whether the repairs have been performed, he has not proven that they still need to be performed. Although the tenants acknowledged that the landlord’s television has not been repaired, I note that the landlord does not seem to have given the tenants any type of notice advising that he must repair the television or their tenancy will be in jeopardy. Although the Act does not expressly require such a notice to be given, I find that the tenants cannot be expected to know what repairs are required until having been advised by the landlord.

The landlord claimed that he is unable to inspect the rental unit because the tenants will not answer telephone calls. The Act requires a landlord to give the tenant 24 hours **written** notice of entry. I find that the tenants have not interfered with the landlord’s lawful right of entry as the landlord has not taken the steps required in order to effect a legal entry.

I find that the landlord has not proven that the presence of pitbulls has given him grounds to end the tenancy and I find that the tenants’ failure to pick up after their dogs does not give sufficient grounds to end the tenancy under the causes alleged on the Notice.

The landlord suggested that the tenant's actions in the alteration in December 2010 may give him grounds to end the tenancy. While that may have been true at one point, I find that the letter authored by the landlord in January 2011 in which he advised that he intended to continue the tenancy, has effectively stopped the landlord from ending the tenancy as a result of that altercation.

I find that the landlord has failed to prove that he has grounds to end the tenancy and accordingly I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

Rule 3.1 of the Residential Tenancy Rules of Procedure require applicants who make a monetary claim to give details of their monetary claim. The tenants provided no breakdown of their claim with their application or with their evidence. They merely provided an assortment of receipts. I find that the tenants did not comply with their obligation to detail their claim so the respondent had adequate notice of the claim made against him and accordingly I dismiss the monetary claim.

Conclusion

The Notice is set aside and the monetary claim is dismissed.

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: April 19, 2011

Residential Tenancy Branch