



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

Landlord: OPC, OPB, FF
Tenant: MT, CNC

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlords and by the tenants. The landlords have applied for an Order of Possession for cause, an Order of Possession for breach of an agreement with the landlord, and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for more time to make an application to cancel a notice to end tenancy and for an order cancelling a notice to end tenancy.

The landlord and both tenants attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. The landlord also called a witness, the property manager, who also gave affirmed testimony and was subject to cross examination by the tenants. With the consent of the parties, all evidence and the testimony provided has been reviewed and is considered in this Decision, with the exception of an evidence package provided by the landlord which was not provided to the tenants.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for cause?
Are the landlords entitled to an Order of Possession for breach of an agreement?
Are the tenants entitled to an order permitting more time to make an application to cancel a notice to end tenancy?
Are the tenants entitled to an order cancelling a notice to end tenancy?

Background and Evidence

This month-to-month tenancy began on August 1, 2009 and the tenants still reside in the rental unit. Rent in the amount of \$650.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. On July 15, 2009 the landlord collected a security deposit from the tenants in the amount of \$525.00.

The landlord testified that a written complaint was received on November 29, 2010 by email from another tenant in the complex. She stated that the manager spoke to the tenants who were the subject of the complaint, and the landlord then sent the tenants a warning letter as a follow-up to that complaint. The tenants did not respond to that letter.

On December 21, 2010 the landlord received another complaint by email from tenants in the unit below this rental unit, and on December 23, 2010 the landlord sent another warning letter to the tenants.

On March 18, 2011 another complaint was received by email, and 2 occurrence reports were received. The landlord again sent a warning letter to the tenants on March 23, 2011 stating that a notice to end the tenancy would be issued.

The landlord further testified that an Addendum to the tenancy agreement was signed by the parties on July 15, 2009 which includes an agreement that marihuana smoking is prohibited.

The landlord's witness testified that he received a verbal complaint in November, 2010 about marihuana smoking in the building, and told the tenant to put it in writing. He stated that after receiving the next complaint, he went to the rental unit and could smell a strong odour of marihuana. He reminded the male tenant of the Addendum, and the tenant replied, "Okay," and closed the door leaving the man standing in the hallway.

The witness further testified that he was confronted by the Association on the 14th or 15th of March, 2011 stating that another tenant had complained about the tenant below smoking marihuana, and he gave the tenant an Occurrence Report form so that she could put it in writing. The form was completed and delivered to him on March 18, 2011 and he also completed his own Occurrence Report and gave them to the landlord. Copies of those reports were provided in advance of the hearing. The report provided by the witness states that he received a complaint from the tenant association about constant smoking of marihuana and that he went to the unit on March 18, 2011 and smelled marihuana. The occurrence report of the tenant states that she resides in the unit upstairs and that the marihuana smell is a daily occurrence. The report is not dated.

The landlord also provided copies of letters received from the tenants in the lower level of the building, which I note speaks more to noise than to marihuana smells.

The landlord issued a 1 Month Notice to End Tenancy for Cause, a copy of which was provided in advance of the hearing. The notice is dated March 29, 2011 and contains

an expected date of vacancy of April 30, 2011. The reasons for ending the tenancy are that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and that the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord's witness testified that the notice was served on March 29, 2011 personally to the female tenant.

The female tenant testified that she does not smoke marihuana. She stated that on January 20, 2011 at about 6:00 p.m. she observed a neighbour from a lower unit to go into a gold colored truck on the street and purchase marihuana. She did not see the money exchange hands, but did see a bag that looked like marihuana.

The tenant further testified that she found bottles of fertilizer consistent with a marihuana grow-op in the garbage of the complex. She told the resident manager about it and asked him at least 3 times to investigate, and she took photographs of the empty bottles. She told him she could smell a very strong odour, but it did not smell like burning marihuana, but of wet marihuana. She stated that the manager told her to put it in writing and send it to the landlord, but the tenant declined to do that stating that she's afraid to. Every time she's ever complained to the manager, he replies that she's a pot smoker, so she quit complaining to him. She gave the photographs to the police.

She also testified that the landlord wants them to vacate the rental unit because her children are ADHD and one is autistic. She stated that she has attempted to talk to the neighbours in the lower unit about the noise from her children, but they refused to talk to her. They thump on the floor for any noise, and as a result, the tenants are not using the porch at all.

She further testified that the landlord's evidence is mistaken because the family was not even home on March 18, 2011 so the landlord could not have smelled marihuana smoke coming from the rental unit that day, nor did her husband open the door to the landlord's employee that day. She stated that the neighbours had called the police on March 21, 2011 accusing her husband of assaulting her. The tenant was putting up a play-pen for her child and no assault had taken place. The police were not pleased. She stated that the tenants below cannot handle any noise at all and they thump on the floor daily.

As a result of the complaints, social workers now visit the home regularly. The tenant stated that it has worked in her favour, because the social workers found no evidence of

the children needing protection, and are now working with the family for the autistic child.

Analysis

Firstly, with respect to the tenants' application for more time to apply to cancel a notice to end tenancy, I refer to Section 47 (4) of the *Residential Tenancy Act*, which states as follows:

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

The tenants' application was filed on April 6, 2011 and the landlord's evidence is that the notice was issued on March 29, 2011. The tenants' application was filed 8 days after the notice was issued, and therefore, the tenants do not require an order permitting more time to file the application to cancel the notice.

With respect to the landlord's application for an Order of Possession, I have reviewed the evidence, and I question why the landlord and the landlord's employees have refused to investigate the complaint of the tenant when she provided evidence of a possible grow-op within the apartment complex, and complained about a smell of wet marihuana.

The evidence of the landlord's witness that he visited the rental unit on March 18, 2011 and smelled marihuana smoke is disputed by the tenant who stated that the family was not even home on that day, and that no one opened the door to him.

I accept the evidence of the landlord that complaints have been received by other tenants, however I have no reason to not accept the evidence of the tenant that the neighbour complains about all noises coming from the rental unit, and has gone as far as to tell the police that the male tenant had assaulted the female tenant when all that happened was a play pen was erected for one of their children.

I have also read the letters of other tenants provided by the landlord for this hearing. I accept that the neighbour is not happy with the tenants in this rental unit, however the person who wrote the letters did not attend the hearing and therefore could not be cross examined, and that has significantly reduced the weight that could be applied to that evidence.

I have read the addendum to the tenancy agreement, and find that smoking marihuana is prohibited and is a material term of the tenancy. However, in the circumstances, I

find that the landlord has not only failed to investigate complaints by these tenants for that material term, but have failed to establish that the tenants have engaged in marihuana smoking in the rental unit. A single incident was investigated by the landlord, which is disputed by the tenants.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession for cause and the landlord's application for an Order of Possession for breach of a term of the tenancy agreement are hereby dismissed. I further order that the notice to end tenancy is cancelled, and the tenancy will continue.

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: May 16, 2011.

Residential Tenancy Branch