



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPQ, OPB, MND, MNSD, MNDC, FF
MT, CNC, LRE, OPT, AAT, AS, O

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is for an order of possession for: cause, the tenant does not qualify for subsidised housing and the tenant has breached an agreement; a monetary order damage to the unit, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee.

The application by the tenants is to allow more time to make an application, to cancel a notice to end tenancy for cause, suspend or set conditions on the landlord's right to enter, obtain an order of possession for the unit, allow access to or from the unit, allow a tenant to assign or sublet and other. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This began April 15, 2011 with monthly rent of \$1500.00 and the tenant paid a security deposit of \$750.00. On May 31, 2011 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause.

The tenants have:

- allowed an unreasonable number of occupants in the unit/site.
- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- damaged the landlord's property.
- has not done required repairs of damage to the unit/site.
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that the tenants have too many guests coming and going everyday and he believes that the tenants and their company sometimes smoke marijuana outside on the property. The tenants testified that they do have friends and family members come over but that the landlord has been standing outside asking people why they are visiting and tells them he does not allow drugs in the house. The tenant's family members now do not come to visit because of the landlord's actions and the tenant stated that they are burning sweet grass as part of their heritage and not smoking marijuana. The landlord claimed that the tenant's have up to 15 people at the property and the tenants responded that they have had a large group over only once. The tenant stated that he does have 2 or 3 friends drop by during the day but that they are not loud or partying. The tenants also referred to the tenancy agreement which notes that 8. Owner's written permission must be given for overnight guests and 2. No noise after 9:30 or a 7 day eviction notice will be given.

The landlord stated that the tenant's have sublet a room in the rental unit. The tenants stated that a friend of theirs was staying with them but that he had since moved out. The landlord was concerned that the friend's personal items were still being stored in the room however the tenants confirmed again that their friend was staying down the street with someone else.

The landlord stated that he had checked off that the tenants no longer qualify for subsidized housing and this was in reference to the tenants subletting a room. The landlord understands that this type of notice is not appropriate in this claim as this is not subsidized housing. Therefore this portion of the landlord's application is dismissed.

The landlord stated that the tenants had breached the tenancy agreement when they sublet a room to a friend and as they had 2 cats in the rental unit. As stated before, the tenant's friend has found alternate housing and when he left, one of the cats went with him. The tenants do still have 1 cat in the rental unit and they stated that they will be finding a new home for it.

The landlord stated that the tenants had broken one of the windows in the rental unit and that it cost \$214.00 to get it fixed. The landlord stated that the tenants had paid him part of the cost but still owed the landlord \$100.00. The tenants responded by saying that they should not have to pay for a window that does not open and went on to explain that 4 of the windows in the rental unit have been screwed shut from the outside by the landlord. The tenants stated that the smoke detector also does not work and did not go off recently when they had inadvertently burnt some food and could not open the kitchen window because it was screwed shut.

The landlord also claims that the lock on the door is broken however the tenants stated that the door knob lock has always been broken but that the deadbolt works, a move in condition inspection was not completed at the start of the tenancy.

The landlord had initially requested \$350.00 for the security deposit however the tenants have since paid the security deposit to the landlord. The landlord has applied to keep the security deposit however the tenancy has not yet ended. Therefore this portion of the landlord's application is dismissed.

The tenants applied to allow more time to make an application however the tenants filed their application within the time frame allowed by the Act. Therefore this portion of the tenant's application is dismissed.

The tenants have applied for an order to suspend or set conditions on the landlord's right to enter the rental unit however clarified that the landlord was not coming in to the rental unit without giving proper notice. Therefore this portion of the tenant's application is dismissed.

The tenant's have applied to obtain an order of possession however the tenants are in possession of the rental unit and do not require an order of possession. Therefore this portion of the tenant's application is dismissed.

The tenant's have applied for return of the security deposit however the tenancy has not yet ended. Therefore this portion of the tenant's application is dismissed.

The tenants have applied to obtain an order to allow the tenants and their guests access to the rental unit as the landlord stands outside asking their guests why they are coming to the rental unit and tells them that drugs are not allowed on the property. The tenant again stated that they are not smoking drugs but performing a ritual that is part of their heritage. The landlord maintains that drugs are being smoked on the property but has not submitted any evidence to this end.

The tenants stated that they had applied to allow a tenant to sublet as that was on the landlord's application but the tenants are not seeking to sublet their rental unit. Therefore this portion of the tenant's application is dismissed.

The tenants referred to other issues with the rental unit such as an infestation of ants, stains on the ceiling from an upstairs unit flood, the windows that have been screwed shut and the landlord harassing their friends and family members.

The tenants advocate proposed a mutual agreement to end tenancy for July 31, 2011 to which the tenants agreed as there are on-going issues with the tenancy. The landlord initially refused this proposal as the tenants have not paid the July 2011 rent. The tenants advocate stated that he would ensure the rent was paid and that with the July 31, 2011 end date, the tenants would have time to look for alternate housing. The landlord stated that he wanted the tenancy to continue and then that he wanted the tenants out immediately.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to a monetary order for damages to the door. The testimony of the parties directly conflicts and there is no condition inspection report on which to base the claim. The landlord claims the lock on the door knob has been broken and the tenant claims it has never worked.

The tenants do acknowledge that a party known to them broke a window and the tenants have paid the landlord approximately 50% of the replacement cost. However as 4 of the tenants windows have been screwed shut and some of the windows do not lock from the inside, until such time as the landlord unscrews the windows and provides locks, the tenants will not be responsible for the \$100.00 balance of the broken window.

As a matter of safety the landlord is hereby ordered to have all of the windows functioning (opening and locking from the inside) and a working smoke detector installed no later than July 22, 2011.

The landlord has not met the burden of proving that he is entitled to an order of possession for cause or breach of the tenancy agreement however a mutual agreement to end tenancy for July 31, 2011 was proposed and with this the tenants will vacate the rental property July 31, 2011. The tenants understand that the July 2011 rent is to be paid in full to the landlord. However until the tenancy ends on July 31, 2011, the landlord is to stop questioning the tenants friends and family or restricting when they may come and visit.

The remainder of the landlord's application is dismissed without leave to reapply.

The remainder of the tenant's application is dismissed without leave to reapply.

The landlord is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The tenancy will come to an end July 31, 2011 at 1:00PM.

The landlord is to fix the windows in the rental unit and provide a working smoke detector no later than July 22, 2011.

The landlord is to allow access to and from the rental unit for the tenant and their guests.

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: July 4, 2011.

Residential Tenancy Branch