



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a One Month Notice to End Tenancy for Cause dated July 7, 2011 and to recover the filing fee for this proceeding.

The Tenant, (T.M.M.) said he served the Landlords in person on July 20, 2011 with the Application and Notice of Hearing (the "hearing package"). Based on the evidence of the Tenant, I find that the Landlords were served with the Tenants' hearing package(s) as required by s. 89 of the Act and the hearing proceeded in the Landlords' absence.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on April 1, 2011 and expires on March 31, 2012. Rent is \$900.00 per month. The rental property is a house on a 5 acre lot.

The Tenant said that at the beginning of the tenancy, the former agent for the property management firm was aware that he would be storing a motor home, travel trailer and storage container on the rental property. However, the Tenant said shortly after the tenancy started, the former agent for the property management firm delivered a letter to him advising him that he was in breach of a material term of the tenancy agreement (ie. Clause 6 of the Addendum) and advised the Tenant to rectify the situation by April 29, 2011 at which time he would be inspecting the property.

Clause 6 of the Addendum to the tenancy agreement provides as follows:

"Unlicensed vehicles: Only vehicles in an operating, insured condition are allowed on the property. Storage of uninsured vehicles, inoperable or undergoing extensive repairs may not be stored on the property. Vehicles insured on a seasonal basis must have valid storage insurance."

The Landlord will tow any vehicles observed to be in this condition and the Tenant will be responsible for towing and storage charges.”

The Tenant, T.M.M., admitted that he also had 3 automobiles on the rental property that were uninsured. The Tenant said he removed those vehicles from the rental property at the end of April 2011 and put them in storage. The Tenant also said the former agent for the property management firm did not attend the rental property to inspect it on April 29, 2011 or at all. However, the Tenant said on July 7, 2011, he received a One Month Notice to End Tenancy from the new agent for the property management firm (D.W.) alleging that he had failed to correct a breach of a material term of the tenancy agreement within a reasonable time after being given written notice to do so.

The Tenant, T.M.M., said D.W. inspected the rental property during the 2nd week of July 2011 and advised him that “everything was fine” and gave him permission to store his uninsured and unlicensed, back-up work vehicle on the rental property. The Tenant also said that on August 2, 2011, D.W. advised him that the Landlords intended to withdraw the One Month Notice. However, the Landlords did not attend the hearing and did not file any documentary evidence or submissions to that effect.

Analysis

In this matter, the Landlords have 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 the Landlords must prove the following:

- that Clause 6 of the Addendum to the tenancy agreement is a material term;
- that the Tenants breached this term; and
- that the Tenants failed to correct a breach of this term within a reasonable time after being given written notice.

RTB Policy Guideline #8 at p. 2 defines a *material term* as one,

“that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement..... ***Simply because the parties have put in the agreement that one or more terms are material is not decisive*** [emphasis added]. The arbitrator will look at the true intention of the parties in determining whether or not the clause is material.”

In the absence of any evidence from the Landlords, I find that there is no evidence to support the One Month Notice to End Tenancy for Cause dated July 7, 2011 and as a result, it is cancelled.

Conclusion

The Tenants' application is granted. The One Month Notice to End Tenancy for Cause dated July 7, 2011 is cancelled and the tenancy will continue. As a result, the Tenants are entitled pursuant to s. 72(1) of the Act to recover from the Landlords the \$50.00 filing fee they paid for this proceeding and ***I order pursuant to s. 72(2) of the Act that the Tenants may deduct that amount (\$50.00) from their next rent payment when it is due and payable to the Landlords.***

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: August 17, 2011.

Residential Tenancy Branch