



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. Both tenants and both landlords participated in the teleconference hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began in 2004. There was no written tenancy agreement. The rental unit is a basement suite in a house. The house was sold in 2005 or 2006, and the new owners moved into the upper portion of the house and took over as landlords. In 2011, the landlord wished to increase the rent and the tenants' portion of utilities. The tenants did not agree with the proposed increases.

On August 29, 2011 the landlord served the tenants with a notice to end tenancy for cause. The notice indicates that the reasons for ending the tenancy are as follows: the tenants have (1) significantly interfered with or unreasonably disturbed the landlord; (2) seriously jeopardized the health or safety or lawful right of the landlord; and (3) put the landlord's property at significant risk.

The landlord's evidence regarding the alleged causes to end the tenancy was as follows.

The tenants have repeatedly engaged in behaviour that has interfered with or disturbed the landlord, caused health risks and put the landlord's property at risk. The landlord suspected that the tenants removed some of the landlord's personal property. The

tenants made alterations to security light without the landlord's permission, which resulted in the landlord purchasing a new security light. The tenants damaged doorways, interior walls and fixtures, and failed to make the landlord aware of required maintenance. The tenants kept the premises unclean, which resulted in a problem with rats. The tenants put the property at risk by placing clothing and clutter on electrical baseboard heating, which caused a safety hazard and which led to the development of mould. The tenants contravened any energy-saving measures attempted by the landlord, such as by leaving windows open with the heat on high. The tenants speed in the driveway and park in the driveway without the landlord's permission.

The landlord also alleged that the tenants have verbally threatened and physically intimidated the landlord. The female tenant has "attitude problems," so the landlord cannot communicate with her.

The tenants' response was that the landlord's allegations were unfounded. The tenant stated that they turn off the heat every time they go out, the apartment is clean, there is nothing left in front of the heaters, and they have never damaged the interior of the rental unit. There was a problem with rats not because of the tenants but because there was fruit from fruit trees all over the back yard. The tenants denied ever threatening the landlord, and stated that the landlords are hostile. The landlord never approached the tenants or gave them written notice to inform them of any of any problems with the rental unit. The problems only came up after the landlord wanted to raise the rent.

The landlord acknowledged that the rent issue "was the straw that broke the camel's back." The landlord stated that they used the rent increase as a way of getting the tenants' attention.

Analysis

Upon consideration of the evidence, I find that the notice to end tenancy is not valid. As there was no written tenancy agreement, the standard terms of a tenancy agreement apply. The landlord did not provide sufficient evidence to show that the tenants engaged in any contraventions of the Act or tenancy agreement, or if they did that any of the tenants' alleged actions were of such significant or serious import as to end the tenancy. The landlord ought to have communicated any concerns they had to the tenants, and given them an opportunity to correct the problems. Furthermore, the landlord acknowledged that these issues came to a head when the tenants refused to agree to a rent increase beyond the permissible amount or an alteration of their tenancy agreement to increase their portion of utilities. The notice to end tenancy is therefore cancelled.

As the tenants were successful in their application, they are entitled to recovery of their \$50 filing fee for the cost of their application.

Conclusion

The notice to end tenancy for cause is cancelled, with the effect that the tenancy continues.

The tenants may deduct \$50 from their next month's rent.

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: October 4, 2011.

Residential Tenancy Branch