



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 and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began January 1, 2011 with and monthly rent of \$750.00 and the tenants paid a security deposit of \$375.00.

On August 31, 2011 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause:

- The tenants have caused extraordinary damage to the unit/site or property/park
- The tenants have has not done required repairs of damage to the unit/site

The tenant testified that during a showing of the rental unit on August 22, 2011 to a prospective buyer, the landlord observed damage to a wall and baseboard heater cover. The tenant stated the landlord on August 23, 2011 sent a letter stating that the wall and baseboard heater were to be repaired to the satisfaction of the owner by August 31 at 9:00AM.

The tenant stated that they had the repairs completed to the wall by the afternoon of August 31, 2011 and the wall painted September 2, 2011 and that the work had been delayed due to the contractor's schedule. The tenants stated that they then requested that the landlord come and check the repairs but that the landlord would not respond to their requests. The tenant said that the baseboard cover had not yet been replaced but that it was on order and should be available soon.

The tenant stated that they then, on August 31, 2011 were served with a 1 month notice to end tenancy for cause. The tenant stated that on this same day they were also

provided with a letter stating that the rental unit would be shown to prospective buyers on Mondays, Wednesdays, Fridays and Saturdays between the hours of 9:30 and 11:30AM. The tenant said that the landlord had previously given then this same notice to enter on August 4, 2011. The tenant said he had advised the landlord that this schedule was not acceptable however the landlord did not respond back to the tenant nor has 24 hour written notice been provided by the landlord for showings of the rental unit.

The landlord testified that on August 31, 2011 he went to the rental unit and saw that the repairs had not been completed by the deadline in the August 23, 2011 letter. The landlord stated that the tenants were then served with the notice to end tenancy for cause and as they repairs had not been completed on time he saw no reason to go and check the repairs. The landlord stated that he then told the tenants to not bother completing the repairs. The landlord questioned why there was such a delay in the repair of the baseboard heater and requested to have the tenant provide a proof of purchase. The landlord expressed concern for the tenants staying in the rental unit as the damage caused to the wall and baseboard heater cover were a result of a fight.

The landlord testified that the schedule to enter was set up to accommodate showing the unit to prospective buyers and that the tenant had told the landlord that it was okay for the landlord to 'just drop by'. The tenant responded by saying that he had never refused the landlord entry when he showed up without notice but that not having notice was stressful and inconvenient.

Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause.

The landlord advised the tenant in writing to have the repairs completed no later than August 31, 2011 at 9:00AM and while the tenants were approximately 7 hours late in completing the repair to the wall, I do not find the time limit of 1 week to hire a contractor and complete repairs adequate. I recognize that the tenant's were responsible for the damage in the rental unit however the tenants took responsibility for the damage and had it fixed in a timely manner.

The baseboard heater cover does need to be replaced and the tenant had stated that the hardware store was waiting for their shipment to come in. That said the tenant will be issued an Order specifying a deadline of October 31, 2011 to complete repair of the baseboard.

In regards to the landlord not providing 24 hours written notice per the *Act*, it was clearly explained to both parties that unless they both agree to some other arrangement in

writing, the landlord per the *Act* will need to provide the tenant with 24 hours written notice when showing the rental unit.

The tenant understands that while the landlord's notice to end tenancy for cause was set aside, that if the tenant's behaviour creates problems on the property in the future, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated August 31, 2011 with the result that the tenancy continues uninterrupted.

I hereby Order that the tenant have the repairs to the baseboard heater completed no later than October 31, 2011.

As the tenants have been successful in their application they are entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's August 31, 2011 notice to end tenancy for cause is hereby set aside with the result that the tenancy continues uninterrupted. .

The tenants are entitled to recovery of the \$50.00 filing fee and may onetime deduct that amount from future rent owed to the landlord.

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