



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a two month Notice to End Tenancy issued for the Landlord's use of the rental unit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written 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.

Preliminary Matter

This hearing came before me following a Review Consideration made by the Landlords. The Tenant had received an order on October 31, 2011, cancelling the two month Notice to End Tenancy. The Landlords applied for a Review, and it was granted, based on their inability to attend the first hearing. The decision of October 31, 2011, was suspended until this hearing took place. This hearing was conducted as a new hearing, pursuant to the Review Decision of November 14, 2011.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

The Landlords issued the Tenant a two month Notice to End Tenancy dated September 30, 2011, with an indicated effective date of December 1, 2011 (the "Notice"). I note that under the Act, the effective date of the Notice automatically corrects to December 31, 2011.

The Notice indicates that the Landlords have all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

Pursuant to the rules of procedure the Landlords went first during the hearing to explain why the Notice had been issued.

The Landlords began by testifying that they do not require permits or approvals for the work they intend to do at the rental unit. The Landlords allege they want to refurbish the rental unit. The Landlords testified initially that they want to re-do the light fixtures and kitchen cabinets in the rental unit. Later in the hearing they stated they also want to re-do the floors in the rental unit.

The Landlords also claim that they had had problems with the Tenant in the rental unit for the last five years. The Landlords had a list of 15 different problems they have had with the Tenant, which they wanted to read into the hearing. I did not allow this, as these were behaviour issues, and the only issue before me was the Notice to end tenancy for Landlords' use.

The Landlords claims the Tenant has not allowed them into the rental unit. Upon further questioning the Landlords it appears that the Landlords were allowed into the rental unit in March of 2011, following them giving the Tenant a written notice that they were entering the rental unit. According to the testimony, the occasions when the Tenant has refused entry is because the Landlords have not given the required written notice to enter.

In reply, the Tenant has submitted a copy of an earlier decision in which she received a monetary order of \$3,024.94 against the Landlords for failing to properly maintain the rental unit. This order is dated two days before the date on the Notice.

The Tenant also testified that the Landlords are refusing to accept the rent from her.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Notice should be cancelled.

I confirm the decision of October 31, and I order that the two month Notice to End Tenancy dated September 30, 2011, is cancelled and is of no force or effect.

Once the Tenant brought into question the good faith intentions of the Landlords to end the tenancy with her Application and submissions, the burden was on the Landlords to establish that they truly intend to do what they said on the Notice and that they are not acting dishonestly or with an ulterior motive.

In this circumstance, I find that the Landlords had insufficient evidence to prove they intend on doing the work in the rental unit they say they will do. For example, they had no estimates of work to be done, no measurements of the unit were taken, no plans had been made and no quotes on materials that were required were in evidence before me.

I also find there was no evidence that any of the work the Landlords alleged they were going to do required that the rental unit be vacant.

Furthermore, throughout the hearing the Landlords continually appeared to be more interested in making allegations about how bad the behaviour of Tenant is, as opposed to explaining what work needs to be done at the rental unit in support of their Notice.

I find that the Landlords are not acting in good faith to end the tenancy with this particular Notice. Based on their demeanour and testimony during the hearing, I find the Landlords are simply retaliating against the Tenant due to a decision the Tenant received against the Landlords, or because of some other personal animosity they hold towards the Tenant.

I explained during the hearing to the Landlords that if they feel the Tenant's behaviour is in breach of the Act, or the tenancy agreement between the parties, then the Landlords should be giving the Tenant the appropriate notice to end tenancy under the Act, and not a notice for repairs they do not appear to intend to do. I note that one of the Landlords (M.S.) testified that he worked in the office of the former "rentalsman" for four years, therefore, he should be aware that the Act has specific requirements on how a tenancy may end. He should also be aware there have been significant changes to the Act since it referred to the "rentalsman".

I also cautioned the Landlords that they are not able to refuse to accept rent from the Tenant.

The Landlords also allege the Tenant has used foul language with them. The Tenant was cautioned to use courtesy when dealing with the Landlord.

Lastly, as the Tenant has been successful in her Application, I allow her to recover the \$50.00 filing fee for the Application. She may reduce her rent for one month by \$50.00.

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: December 05, 2011.

Residential Tenancy Branch