



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2012, for a rent reduction and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are the Tenants entitled to a rent reduction?

Background and Evidence

This fixed term tenancy started on May 1, 2011 and expires on April 30, 2012. Rent is \$1,525.00 per month payable in advance on the 1st day of each month plus utilities. The Parties' tenancy agreement states that parking for 2 vehicles, an RV and quads is included in the rent.

The Landlords said the Tenants did not pay rent for January 2012 in full when it was due (ie. they made a partial rent payment of \$1,475.00 on January 2, 2012). As a result, on January 6, 2012, the Landlords served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2012. The Landlords said the Tenants have not paid the balance of the rent arrears for January 2012 and have not yet paid rent for February 2012.

The Tenant, K.M., admitted that he withheld \$50.00 from the rent for January 2012. K.M. claimed that he had parked his 29 foot, 5th wheel trailer in a parking area behind the rental property but in December 2011, a by-law officer advised him that it was parked too close to a fire hydrant and he would have to move it. K.M. said he had no choice but to store the RV off of the rental property at a cost to him of \$50.00 per month.

The Landlords claim that the parking area behind the house is large enough for the Tenants' to park the RV diagonally and that the only reason the Tenants' RV does not fit there is because they also have a trailer with a hot tub parked there. The Landlords claimed that the driveway at the front of the house is 47 feet long and 19.5 feet wide and is also large enough to accommodate the Tenants' RV. The Landlords argued that

the Tenants have not done this because they have more vehicles that were permitted under the tenancy agreement.

The Tenants admitted that they have 3 automobiles (one parked on the street, one parked in a two car garage and one parked to the right of the driveway), a boat they store in the driveway and a Sea Doo they store on the side of the house as well as the RV and trailer parked behind the house.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

Although the Tenants applied to cancel the 10 Day Notice within the 5 days granted under s. 46(4) of the Act, I find that there are no grounds to grant their application. The Tenants admitted that rent of \$1,525.00 was due on January 1, 2012 but that they withheld \$50.00 from their rent and did not pay it after being served with the 10 Day Notice dated January 6, 2012.

Section 66(2) of the Act says the director may not extend the time limit under s. 46(4) of the Act for a tenant to pay overdue rent unless the extension is agreed to by the Landlord. Section 26(1) of the Act says that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.” The Act permits a tenant to deduct an amount from their rent only in the following circumstances;

- Where the tenants have *already* received an Order from the director permitting them to deduct an award of compensation from their rent under s. 65 of the Act; or
- Where the tenants have incurred expenses for emergency repairs under s. 33 of the Act.

I find that the Tenants did not have the Landlords’ authorization to withhold rent and did not have an order from the director permitting them to withhold their rent. I also find that the Tenants did not incur expenses for emergency repairs. Consequently, the Tenants’ application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2012 is dismissed without leave to reapply. The Landlords requested and I find that they are entitled pursuant to s. 55(1) of the Act to an Order of Possession to take effect 2 days after service of it on the Tenants.

Section 27 of the Act says (in part) that a landlord must not terminate or restrict a service or facility unless the landlord reduces the rent in an amount that is equivalent to the reduction in value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The Tenants have the burden of proof on this issue and must show (on a balance of probabilities) that they are unable to park their RV on the rental property because there is inadequate space for it. This means that if the Tenants' evidence is contradicted by the Landlords, the Tenants will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Tenants claim that while the driveway at the front of the rental property is large enough to accommodate their RV, the slope of the driveway is too steep to park the RV without damaging it. Consequently, the Tenants argued that the only available spot to park the RV is behind the rental property but that given the by-law restrictions, the space is inadequate. The Tenants provided no documentary or other evidence in support of this assertion.

The Landlords denied that there was insufficient space to park the Tenants' RV behind the rental unit and claimed that they parked an RV of almost identical dimensions in the spot behind the rental property for many years. The Landlords claim that if the Tenants removed a trailer with a hot tub on it from that area, they would be able to park the RV diagonally. In support of their position, the Landlords provided photographs of parking space behind the property as well as a diagram showing the lot dimensions in relation to the street and fire hydrant. The diagram alleges that there would be sufficient room for the Tenants' RV to park diagonally even when the offsets from the fire hydrant are taken into account.

Given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Tenants to resolve the contradiction, I find that there is insufficient evidence that the rental property cannot accommodate their RV trailer and as a result, their application for a rent reduction is dismissed without leave to reapply.

Conclusion

The Tenants' application is dismissed without leave to reapply. An Order of Possession to take effect 2 days after service of it on the Tenants has been issued 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: February 01, 2012.

Residential Tenancy Branch