



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants' application to cancel a Notice to End Tenancy for cause and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenants and landlord provided some documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Some of the landlord's evidence arrived on the day of the hearing and was not considered, pursuant to s. 3.5 of the Rules of Procedure. All admissible evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this tenancy started on March 01, 2007. Rent for this unit is \$820.00 and is due on the 1st day of each month in advance.

The landlord testifies that the tenants were served a One Month Notice to End Tenancy for cause on April 30, 2012 in person. This Notice has an effective date of May 31, 2012, and gave the following reasons to end the tenancy:

- 1) The tenant is repeatedly late paying rent;
- 2) The tenant has caused extraordinary damage to the unit/site or property
- 3) The tenant has not done required repairs to the unit, site of property
- 4) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord testifies that the tenants have been late with their rent payments on three occasions, on February 01, 2011, August 01, 2011 and February 01, 2012. The landlord testifies that the tenants send post-dated cheques every three months and on these occasions the cheques were not received on the first day of the month. The landlord testifies that the tenants wanted to pay their rent by internet banking however the landlord states she does not have this system set up at her bank. The landlord has provided no documentation from her bank or a rent ledger to show these late payments.

The tenants dispute the landlord's claims. The tenants testify that their records show that rent for February 01, 2011 was presented to their bank on February 01, 2011, Rent for August 2011 was also presented at their bank on August 01, 2011. The tenants agree that the rent for February, 01, 2012 was not posted to the landlord until February 01, 2012, however the tenants have provided the e-mail sent to the landlord on January 31, 2012 asking if they can pay their rent by email or money gram as they had not posted it on time. The tenants state the landlord did not respond to this e-mail so they sent the cheques by priority post. The tenants have provided a itemised list of each rent payment and the date it was processed through their bank.

The landlord testifies that the tenants have caused extraordinary damage to the rental unit. The landlord testifies that when the tenants moved into the rental unit all the appliances were nearly new. The landlord testifies that she had a realtor neighbour who checked the house before the tenants moved in and who informed the landlord that the

house was in good order. The landlord testifies that during the tenancy all the appliances have been damaged by the tenants and the landlord has had to have the fridge and fridge door repaired, the stove door had a crack in the glass, the microwave oven, the dishwasher and the washer and dryer were all repaired.

The landlord testifies that the tenants caused damage to the kitchen cupboards and did not replace the cupboard doors when they came off; the tenants failed to look after the yard which was a disaster area; the carpets have been left un-cleaned and the floors have been damaged.

The tenants dispute the landlord's claims. The tenants testify that the appliances are older than the landlord has stated as the warranties for the appliances show the appliances are over 10 years old. The tenants testify that the microwave oven belongs to them and they have never asked the landlord to repair it. The tenants testify that the dishwasher did break down and they notified the landlord. The tenants state they paid for the repair to the dishwasher. The tenants testify that they believe the oven door glass became cracked after the self cleaning system was used and they also notified the landlord of this. The tenants' state the crack became bigger because the landlord did not repair the door straight away. The tenants testify that they returned from a trip and found the fridge door seal would not stick. When they spoke to the landlord they were told to use duct tape to keep the fridge door closed. The tenants testify that they have not damaged any of the appliances through their actions or neglect.

The tenant's testify that the cupboard doors were fitted with screws which came loose and could not be replaced with the correct screws until the tenants could find them and these doors have now been repaired although it was not the tenants' responsibility. The tenants claim any damage to the floors is caused because the windows and doors in the unit leak and as a result have caused water damage to the floors. The tenants testify that they have notified the landlord of this problem.

The tenants testify that there have been problems with the irrigation system of which they are not responsible for. The tenants' testify that the first year in residence they paid to have the irrigation system blown out and the second year they paid for new heads. The landlord has never repaid the tenants for these costs. The following year the tenants testify they watered the grass by hand and the year after that they informed the landlord that they were not prepared to do it again and the landlord should repair the irrigation system. The tenants also testify that the landlord did not provide the tenants with a lawn mower to cut the grass and the tenants have paid to have the grass cut every 10 days. The tenants agree they had an indoor stove in the yard which has since been removed and claim the yard is not a disaster area.

The landlord testifies that the tenants have not done required repairs to the property with regard to removing a fence in the yard and the repair to the kitchen cupboard doors. The landlord agrees she has never asked the tenants in writing to do these repairs.

The tenants testify that they have erected a six foot high fence in the yard because of privacy issues with a neighbour. The tenants testify that this fence is free standing and is not attached in any way to the landlord's property. The tenants also testify that they have replaced the cupboard doors in the kitchen although this was not their responsibility.

The landlord withdraws the last reason given on the One Month Notice as the landlord states she cannot recall what this was associated with.

The landlord orally requests at the hearing that the One Month Notice is upheld and an Order of Possession is issued effective for June 30, 2012.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has 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 if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has provided insufficient evidence to show that the tenants have been late with their rent on three occasions and the tenants have provided evidence to show that they were only late on February 01, 2012 with rent but have also shown that they attempted to pay the rent by another means on February 01, 2012.

The landlord has not shown that there is extraordinary damage to the rental unit and has no evidence to support the landlords claim that the tenants are responsible through their actions or neglect for any damage to the unit, site or property. I further find the landlord has insufficient evidence to show that there are any required repairs to the property that the tenants are responsible for. Tenants are entitled to use a property in a way they see fit as long as the use of the property complies with the *Residential Tenancy Act*, regulations or tenancy agreement. The fence the tenants have erected is not attached to the landlords property and can therefore be removed at the end of the tenancy without causing any damage to the property.

Consequently In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated April 30, 2012 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, the tenants are entitled to recover their

\$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable 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: May 24, 2012.

Residential Tenancy Branch