



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the tenants 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 landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. All 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 cancel the Notice to End Tenancy?

Background and Evidence

Both parties agree that this tenancy started on August 31, 2011. The tenancy agreement states that this was a fixed term tenancy which is due to end on February 31, 2012 and then revert to a month to month tenancy. Rent for this unit was agreed at \$800.00 per month and is due on the last day of each month in advance. The tenancy agreement also states that there will be no damage deposits charged.

The landlord testifies that the tenants were served a typed One Month Notice to end their tenancy on April 01, 2012. After the landlord was told this was not a legal notice the landlord served the tenants in person with a proper Notice to End Tenancy for cause on May 09, 2012. This notice has an effective date of June 30, 2012 and gave two reasons to end the tenancy as follows:

- 1) 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.
- 2) Security or pet deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testifies that the tenancy agreement states that all repairs, costs will be the sole responsibility of the tenant due to amount of rent charged and all painting and renovations will be at the tenants discretion and cost.

The landlord testifies that she provided all the materials for the tenants to do repairs and painting to the property. The tenants have not maintained the house and the landlord states she is concerned about the lack of maintenance work performed by the tenants on the property. The landlord states she sent the tenants a letter on February 05, 2012 concerning the lack of maintenance and reminding the tenants of their agreement to do work on the house in exchange for cheaper rent. The letter goes on to remind the tenants that the landlord is trying to sell the house and to keep the house tidy and entrance ways clear so people can enter rooms.

The landlord testifies that since receiving the letter the tenants have only removed two skate board ramps from the front of the house. The landlord also testifies that the tenants have enclosed the carport and have not given the landlord a key to this area so the landlord can access her mud room. The landlord states by enclosing this carport the tenants are in violation of the City by-laws and have closed of the emergency exit from the house.

The landlord testifies that the tenants got a dog without permission from the landlord and have not paid a damage deposit.

The landlord requests that the One Month Notice to End Tenancy is upheld and the landlord seeks an Order of Possession.

The tenants dispute the reasons given on the One Month Notice. The tenants testify that when they moved into the property they had a 30 days option to purchase the property. With that in mind the tenants agreed to do any necessary repairs to make the house in a liveable condition and not to completely renovate the landlord's house.

The tenants state that to date they have made repairs in the property to the mould problem in the bathroom; they have replaced the stove; replaced some pipe work; repaired the furnace; and removed several loads of garbage from the property. The tenants' testify that they did make an offer on the house which was accepted by the landlord; however this deal later fell through and the landlord is now bringing in a new set of rules.

The tenants' testify that they are not prepared to spend tens of thousands of dollars on a property that they rent to do repairs and renovations and they are not responsible for renovations to the landlord's property. This including renovations to the basement after a flood from the road. The tenants deny receiving a letter from the landlord in February. The tenants state the landlord was supposed to meet with the tenants in February but the landlord did not appear. The tenants state the first they have seen of this letter was in the landlord's evidence package.

The tenants' testify that the landlord had no issues at the start of the tenancy when the tenant wanted to enclose the carport with sheeting to protect the tenant's bike and tools. The tenants' testify that it is the landlord's belongings in the mud room which prevent access to and from this area for emergencies and not the enclosed carport.

The tenants testify that their tenancy agreement states; There will be no damage deposits charged. The tenants' testify that the landlord has always been aware that they have a dog and has been happy about the dog until now. The tenants seek to cancel the One Month Notice to End Tenancy and recover their filing fee of \$50.00 from the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the first reason given on the Notice to End Tenancy; the landlord has provided a copy of the tenancy agreement in which there is a term concerning repairs to the rental unit. I refer the parties to the *Residential Tenancy Act* (Act) section 32(1) which states a landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 5 of the *Act* states landlords and tenants may not avoid or contract out of this *Act* or the regulations. Any attempt to avoid or contract out of this *Act* or the regulations is of no effect.

I further find this term to be an unconscionable term as it is oppressive and grossly unfair to one party. Terms that are unconscionable are not enforceable

With regards to the second reason given on the Notice to End Tenancy; the tenancy agreement states that 'No deposits will be charged'. Therefore the landlord cannot now request a security or pet damage deposit and cannot end the tenancy on the grounds that neither deposit was paid within 30 days of the start of the tenancy.

Consequently, 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 tenants' application is allowed. The one Month Notice to End Tenancy for Cause dated May 08, 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 the **\$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 31, 2012.

Residential Tenancy Branch