



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 the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") and for recovery of the filing fee

The landlord's witnesses were excused from the hearing until they were called into the conference.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to 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 Issue-

The landlord's agent was questioned about the landlord's evidence, which was approximately 60 pages. The landlord's agent stated she did not serve the evidence package to the tenants as she was unaware that she was required to do so.

The landlord's agent was given an opportunity to request an adjournment as I told her that I would be unable to consider the landlord's evidence for the purposes of this hearing as she had not submitted it to the tenants as required under the Residential Tenancy Branch Rules of Procedure. The landlord's agent responded that she could proceed with or without it.

The tenants objected to an adjournment due to the stress of a potential end to their tenancy and the resulting adverse effects on their health.

I excluded the landlord's evidence and the hearing proceeded, with the proviso to the landlord's agent that she could read from her evidence and make references to it during her testimony.

Issue(s) to be Decided

Have the tenants established an entitlement to have the Notice to End Tenancy for Cause cancelled and to recover the filing fee?

Background and Evidence

This month to month tenancy began on February 1, 2011, monthly rent is \$360.00 and the tenants paid no security deposit.

The residential property is a 35 unit, elderly citizens building.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenants a 1 Month Notice to End Tenancy for Cause. The Notice was dated May 4, 2012, was delivered via personal delivery on May 5, 2012, listing an effective end of tenancy of June 5, 2012. The move out date listed on the Notice is ineffective, due to section 47 of the Act, and is automatically corrected to June 30, 2012.

The cause as stated on the Notice alleged that the tenants have put the landlord's property at significant risk.

In support of their Notice, the landlord's agent testified the tenants have installed their own alarm system in their rental unit, which was the concern in issuing the Notice. The landlord's agent stated that if the tenants just used the emergency portion of their alarm system, there would likely be no problem; however, the landlord stated that the tenants used their full alarm system.

The landlord's agent submitted that tenants' alarm system may interfere with the building's alarm system, which would create an issue with emergency personnel when accessing the rental units in the building.

The landlord's agent stated that the tenants knew from the beginning, they were not to put in their own alarm system; however, when questioned further as to how the tenants knew this, the landlord could not provide specific information other than to state that the tenancy agreement prohibited the tenants from changing their locks.

I heard testimony alleging the tenants changed their lock, but was clarified, upon questioning, that the landlord was not sure if the lock had been changed.

I also heard testimony from the landlord's agent that on the application for tenancy which the tenants signed, the tenants are encouraged to purchase their own emergency alarm system. The landlord's agent pointed out that the company currently servicing the building was the preferred provider.

The landlord's agent admitted at further questioning that she did not know if the building's alarm system had been compromised.

The landlord's witness, a representative of the security alarm system, attended the rental unit and viewed the tenants' alarm. The witness stated that she asked the tenants if the tenants used the full alarm system, to which the tenants responded that they only used the emergency portion of the alarm.

The witness first stated that the tenants' alarm system compromised the wiring system, and then offered different testimony when questioned further, stating she was not a licensed electrician and was not qualified to make those comments.

The tenants, in response, stated that the female tenant, due to her poor health and doctor's orders, were required to obtain an emergency alarm system. The tenants acknowledged that they were offered to use the emergency alarm system of the company primarily servicing the residential property; however the tenants purchased their own alarm system so that the female tenant had greater range of mobility, according to the tenants.

The tenants acknowledged that alarm system they purchased was a full alarm system, but that it came as a package with the emergency alarm system and that they did not use the other portion of the alarm system.

The tenants denied compromising the residential property's wiring and stated that the alarm was battery operated.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

Once the tenants made a timely application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenants have put the landlord's property at significant risk.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to prove the causes listed on the Notice.

In reaching this conclusion, the landlord contended that the tenants' alarm system compromised the residential property wiring; then confirmed having no actual proof.

The landlord also acknowledged that the electrical inspector has been asked to attend the premises to inspect the wiring, but that the inspector has been busy and has yet to attend.

I therefore find the landlord submitted insufficient evidence to prove that the tenants have put the landlord's property at significant risk.

Conclusion

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated May 4 and issued May 5, 2012, for an effective move out date of June 5, 2012, is not valid and not supported by the evidence, and therefore has no force and effect. **I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

As I have granted the tenants' application to cancel the landlord's Notice, I find that the tenants are entitled to recover their filing fee of \$50.00.

The tenants are authorized to deduct \$50.00 from their next or a future month's rent payment in satisfaction of their monetary claim.

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