



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC OLC LRE

Preliminary Issues

At the outset of the hearing each participant clarified their first and last names. I noted that the Tenants had misspelled the Landlord's name (G.F.). It has been corrected and listed in the style of cause of this decision in accordance with section 64 (3)(c) of the Act that stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

The parties were given the opportunity to settle this matter, pursuant to section 63 of the Act, however they were not able to reach an agreement so we reverted to the dispute resolution process where I heard testimony pertaining to the issuance of a 1 Month Notice to End Tenancy.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a notice to end tenancy for cause, to allow the Tenants more time to make an application to cancel a notice, to have the Landlords comply with the Act, regulation or tenancy agreement, and to suspend or set conditions on the Landlords' right to enter the rental unit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has a valid 1 Month Notice to End Tenancy been issued and served upon the Tenants in accordance with the Act?
2. If so, have the Landlords met the burden of proof to have the Notice up held?
3. Did the Landlords attend the hearing and make a request for an Order of Possession?

Background and Evidence

The parties agreed they entered into a written month to month tenancy agreement that began on January 1, 2012; however, the Tenants were granted early possession on December 30, 2011. Rent is payable on the first of each month in the amount of \$1,500.00 and on October 31, 2011 the Tenants paid \$750.00 as the security deposit.

The Landlords submitted that they had informed the Tenants of their need to repair the roof when the Tenants viewed the house in October 2011. They had intended to construct an addition on the house at a later date; however they found out that the trusses had to be incorporated in the roof repair so they decided to have the addition constructed at the same time. Then on December 30, 2011 they found out from the previous tenants about a water leak problem which they attempted to have resolved as soon as possible. They hired a contractor to repair the water leak and gave him the Tenant (G.G.) contact information; however the Tenant failed to respond after a few messages were left.

The Landlords asserted that they have kept the Tenants informed each step of this process, and they referenced their evidence which included their written statement, photos, and copies of e-mails, one from February 14, 2012, which supports they communicated their plans to get the work completed in May or June 2012. They have worked hard to try and not upset the Tenants, by keeping them informed and scheduling contractors with the Tenants' schedules in mind, however once the work was scheduled to begin the Tenants waited until the last minute and refused the contractors access and placed a lock on the main gate.

The Landlords stated that when they applied for the building permit their municipality required an inspection and told them that because they were in a high fire district that they were required to have some pine trees removed that were too close to the house. The Tenants were advised of this requirement and they worked with the Tenants to schedule the work. However on the day the work was to be performed the Tenants had placed a lock on the gate to prevent them access to the property.

The Landlords submit that they have worked very hard to accommodate the Tenants throughout this process and had agreed to offer the Tenants a 50% discount on their rental payments for the duration of the construction.

The Tenants affirmed they saw the property October 30, 2011 and at that time they were only told the roof was going to be replaced and that the Landlords were going to construct an addition to the house in the future. They stated they were not told of the

Landlords' intent to combine the addition with the roof repair until January 1, 2012. They asserted that they were not given a chance to say no to the project and they confirmed they sought no remedy through the *Residential Tenancy Branch* until they filed their application on May 18, 2012.

The Tenants confirmed that G.G. had a bad evening on May 3, 2012, the night prior to when the tree cutters were scheduled to attend the property so she left the lock on the gate. When they called to gain access they were told they would have to come back another day at which point they informed the Tenants they would cut the lock off to gain entry. G.G. opened the gate to allow them access.

The Tenants noted that they first met with the Landlords' contractor in early April and then on May 1, 2012 the contractor was more concerned about bracing the new wall and there was no mention of mold in the walls. They confirmed that they placed a lock on the gate so the Tenant G.G. could feel safe while Tenant D.H. was out of town working. They did not offer the Landlords a key to the lock nor did they tell the Landlord they had a spare key hidden near the gate.

On May 26, 2012 the Tenant D.H. said he called the Landlords and told them that all future communications would have to be done in writing, not by e-mail and not over the telephone. Then on May 27, 2012, the Tenant D.H. called the Landlord's contractor and told him he would not be granted access to the property as previously scheduled for May 28, 2012.

The Landlords stated that because the Tenants continue to interfere with their right to repair and maintain their property they issued a 1 Month Notice and posted it to the Tenants' door on May 26, 2012. The Tenants confirmed receipt of the Notice on May 26, 2012.

The Landlords stated they wished to have the 1 Month Notice upheld and to have an Order of Possession effective on June 30, 2012.

Analysis

I have carefully considered the aforementioned and the documentary evidence submitted by each party.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act. The Notice was issued listing the following reasons:

The Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonable disturbed another occupant or the landlord
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Put the landlord's property at significant risk

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Neither party disputes that the roof of the residential property required replacement. The Landlord asserted that roof trusses needed to be replaced and therefore they decided to have the addition completed at the same time as the roof project was done. As such, I make no findings on the matter of the necessity of the work.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the Landlords to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelope would deteriorate occupant comfort and the long term condition of the building.

I accept the Landlords' evidence and testimony that they took all reasonable steps to ensure the project would minimize the impact to Tenants. I also acknowledge that the Landlords understood that the work and its schedule was intensive and required intrusion into the rental unit and therefore they were willing to reduce the rent by 50% for the duration of the project.

Notwithstanding the above, the Tenants took it upon themselves lock the tree contractors out of the property until the contractors threatened to cut the lock. The Tenants also took it upon themselves to contact the Landlords' contractor, without permission, and cancelled the work that had previously been scheduled by the Landlord.

Upon consideration of all the evidence presented to me, I find the Landlords had valid reasons for issuing the Notice and therefore the Notice is upheld and the Tenant's application to set aside the Notice is dismissed.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession effective June 30, 2012, the effective date of the 1 Month Notice.

Having upheld the Notice to end tenancy, I find the remainder of the Tenants' application to be moot as this tenancy is ending.

Conclusion

I HEREBY DISMISS the Tenants' application, without leave to reapply.

I HEREBY ISSUE the Landlord an Order of Possession effective June 30, 2012 at 1:00 p.m. This Order is legally binding and must be served upon the Tenants.

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: June 18, 2012.

Residential Tenancy Branch