



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNC, CNL, FF
 Landlord OPC, OPB, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession and to recover the filing fee for this proceeding.

The Tenants filed seeking an Order to cancel the Notices to End Tenancy and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on May 27, 2012, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on May 18, 2012, in accordance with section 89 of the Act.

Both parties confirmed receiving the other parties Hearing Packages.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the Tenancy?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notices to End Tenancy that have been served on them?

Background and Evidence

The tenancy started on January 1, 1999 with previous owners of the property and this tenancy started on September 29, 2011 when the Landlord purchased the property. The tenancy is a month to month tenancy. Rent is \$1,560.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$287.50 on January 1, 1999.

The Landlord's Advocate said they issued a 1 month Notice to End Tenancy dated May 7, 2012 for seriously jeopardizing the health and safety of other occupants or the landlord and for a breach of the tenancy agreement. The Landlord's Advocate said the breach of the agreement was that the Tenants have denied the Landlord access to the rental unit after written notice was given to the Tenants to inspect the property. The Tenants said they did deny access at first when the Landlord did not specify what the inspection was for, but did provide access as the notice requested on April 16, 2012 after understanding the reason. The Tenants said they received written notice for inspections on April 14, 2012, April 20, 2012 and May 29, 2012. The Tenant continued to say they gave the Landlord access to the rental unit on April 16, 2012 and on May 31, 2012 as requested. The Tenant said they did not give the Landlord access on April 20, 2012 because the Tenants said they felt they were being harassed by the Landlord. The Landlord's Advocate said the access on April 16, 2012 was for 10 minutes and then the Tenant told the Landlord to leave. The Landlord's Advocate continued to say that the access on May 31, 2012 was with the City inspectors to investigate a suite and to determine what was to be done with the suite. The Landlord's Advocate said the Tenants did not allow them access with the City inspectors, but the Tenants did allow the City inspectors access to the unit. The Tenants continued to say they gave the Landlord access to the rental unit in October, 2011 when they purchased the property and again in January, 2012, February, 2012 and March, 2012. The March 4, 2012 visit by the Landlord was accompanied by a contractor to look at the laundry facilities.

The Landlord Advocate said the Tenants have breached their tenancy agreement by not allowing the Landlord access to the rental unit when written notice was given. As a result the Landlord said they would like an Order of Possession with an effective vacancy date of June 30, 2012 as indicated on the 1 Month Notice to End Tenancy, if their application is successful.

The Tenants said that they have given the Landlord access to the rental unit two of the three times that they received written notice for an inspection. The Tenants said they do not have to give the Landlord access more than one a month for inspections, they did not feel the second inspection on April 28, 2012 was reasonable and they believe they were being harassed by the Landlord. The Tenants said they have not breached a material term of the tenancy agreement and they have not seriously jeopardized the

safety or health of another tenant or the Landlord. The Tenant said they submitted two signed witness statements from the other tenants in the rental complex stating that there are no issues between these tenants and the Tenants in this application. The Tenants said they are requesting an order to cancel the 1 Month Notice to End Tenancy for Cause date May 7, 2012.

As well the Landlord's Advocate said they issued a 2 month Notice to End Tenancy dated May 7, 2012. The Landlord's Advocate said there are substantial renovations that need to be done to the rental unit, which require the Tenants to vacate the unit while renovations are being done. The Landlord's Advocate said because of these renovations the Landlord issued a 2 Month Notice to End Tenancy for the Landlord's Use of the Property so they can complete the renovations to the rental unit. On questioning the Landlord's Advocate said they do not have any of the permits or approvals required by law from the authorities to do the renovations as of yet. The Landlord's Advocate said they don't have the permits and approvals because their access to the rental unit has been denied by the Tenants.

The Tenants said the Landlords have had access to the unit and the Landlord has promised to repair a number of things in the unit, but to date the Landlord has not made any repairs that they have asked for.

The Landlord's Advocate said they would prefer an order of possession based on the 1 Month Notice to End Tenancy for Cause because the effective vacancy date is June 30, 2012 where as the 2 Month Notice to End Tenancy has an effective vacancy date of July 31, 2012.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenants and the Landlord and the Landlord's Advocate. The Landlord's Advocate said the Tenants have seriously jeopardized the health and safety of other occupants or the landlord and that the Tenants have breached a material term of the tenancy agreement by not allowing the Landlord access to the rental unit. The Landlord's Advocate said these are the reasons for issuing the 1 month Notice to End Tenancy.

Section 47 (d) (ii) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, their health or safety must have been **seriously jeopardized**. As such the Landlord must show that the Tenants **seriously jeopardized** the health or safety of the landlord or another occupant. The Tenant submitted evidence in the form of signed witness statements that said there were no issues between the other tenants and the Tenants/Applicants. As well the Landlord has not

provided an evidence or testimony that proves the Tenants put the Landlord or other tenants' health or safety at risk. I find the Landlord has not established grounds to evict the Tenants for **seriously jeopardizing** the health or safety of the landlord or other tenants.

In addition I accept that the Tenants have provided the Landlord with access to the rental unit on April 16, 2012 and on May 29, 2012 as per the written entry requests from the Landlord. I also accept the Landlords testimony that access was denied to them on April 28, 2012. I accept the Tenant testimony that the second inspection on April 28, 2012 was not reasonable as an inspection was made on April 16, 2012; therefore pursuant to section 29 (b)(i) (the purpose of the entry must be reasonable); I find the Tenants have established grounds to show the entry was not reasonable and therefore the Tenants are awarded an order to cancel the 1 Month Notice to End Tenancy for Cause.

With respect to the Notice to End Tenancy for the Landlord's Use of the Property to make renovations that require the Tenants to vacate while the renovations are being completed, I find the Landlord stated on the Notice to End Tenancy, that she had all the permits and approvals required by law to complete the renovations. On questioning the Landlord's Advocate he said they do not have the permits and approvals required by law to complete the renovations. Consequently, I find that the 2 Month Notice to End Tenancy for Landlord's Use of the Property is not valid because the permits and approvals have not been received by the Landlord. To issue this Notice to End Tenancy these permits and approvals **must** be in the Landlord's possession. As a result I order the 2 Month Notice to End Tenancy for the Landlord's Use of the Property is cancelled.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the July, 2012 rent. The July, 2012 rent is adjusted to \$1,510.00.

As the Landlord has not been successful in this matter I order the Landlord to bear the cost of the application of \$50.00 which the Landlord has already paid.



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Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated May 7, 2012 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

I order the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated May 7, 2012 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

I order the Tenants' to adjust their July, 2012 rent to \$1,510.00 in order for the Tenants to recover the filing fee of \$50.00 for this proceeding.

The Landlord's application is dismissed with leave to reapply.

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*.

Residential Tenancy Branch