Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to end the tenancy early and obtain an Order of Possession.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on July 6, 2012. Mail receipt numbers were provided in the Landlord's Agent's verbal testimony.

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. 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. Should the Landlords be granted an Order to end this tenancy early and to obtain an Order of Possession?

Background and Evidence

The Landlord read the terms of the written tenancy into evidence. The following facts of the tenancy agreement were not in dispute: the parties entered into a fixed term tenancy agreement that began on August 31, 2011which switched to a month to month tenancy after February 31, 2012 [sic] (this date would automatically correct to February 29, 2012 as there were only 29 days in February 2012); rent is payable on the last day of each month in the amount of $800.00; no deposits are required; the tenancy agreement included a statement indicating the Tenants had the option to purchase the property if they established funding to purchase the property no later than November 30, 2011; the option to purchase was not completed; and the Tenants continue to occupy the rental unit and pay the monthly rent.

Both parties spoke of attending dispute resolution on May 31, 2012, where the Tenants had filed to cancel a 1 Month Notice to end Tenancy. The Dispute Resolution Officer upheld the Tenants' request and cancelled the Notice.

The Landlord and Agent submitted into evidence copies of: receipts for payment of rent; photographs of the unit; a typed statement which included sections of alleged e-mails sent by their realtor; a complaint letter from a neighbour; a typed unsigned letter from a manager of a local fuel company; a June 9, 2012 letter issued to the Tenants requesting removal of walls constructed to enclose the carport; a police file number relating to a complaint stemming from an incident of October 2, 2011; and a letter from their municipal by-law officer.

The Landlord and Agent asserted that this tenancy should end early because of the accumulation of events. When asked what has occurred in the days leading up to filing their application on July 4, 2012 they spoke to their June 9, 2012 written request to have the Tenants' remove the structure closing in the carport. When asked if they conducted an inspection on June 15, 2012 as indicated in this letter the Landlord said she did not do the inspection because of the way the Tenant was starring at her making her feel intimidated. She confirmed that the structure had not been removed as requested in the June 9, 2012 letter.

The Landlord and Agent turned to the neighbour's complaint whereby the Tenants allegedly filled the heating oil tank with diesel fuel and broke the fence during the delivery. When asked if there were written warnings issued to the Tenants in relation to this issue the Agent advised there were only verbal warnings. The Landlord indicated there was written warnings provided in the evidence however there were none submitted. When asked what date the events referred to by the neighbour occurred, neither the Agent nor the Landlord were able to provide the dates.

The Agent stated that he had recently received e-mails which he found to be threatening and that he has updated the police file as incidents have occurred. The e-mails were not submitted into evidence so the Agent read the e-mail and confirmed that he felt the words "game-on" to be threatening. He also made reference to locks being changed at the rental unit and the Tenants videotaping his son and the inside of his house.

The male Tenant advised that they had not had an opportunity to submit evidence in response to this application and noted that many of these issues were discussed when they had the previous Notice cancelled.

The Tenants stated that they have been served another 1 Month Notice and will be attending dispute resolution near the end of July 2012 to dispute. He confirmed videotaping the delivery of his rent payment as payment of rent is at issue for their next hearing.

Analysis

In making an application for an early end to this tenancy the Landlord has the burden of meeting two tests: (1) that there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the landlord and placing the landlord's property at significant risk, **and** (2) that it would be unreasonable or unfair to the Landlord or other occupants to wait for a one month Notice to End Tenancy for cause under section 47 of the *Act* to take effect.

I am not satisfied that the Landlord has met the burden of showing that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect. I am satisfied that given the accumulation of events that there may be cause to end this tenancy pursuant to section 47 of the *Act*; however, I do not find it is unfair or unreasonable for a one month Notice to End Tenancy to take effect.

I make this finding for several reasons. First of all, I am satisfied that the Tenants have not seriously jeopardized the health and safety of the Landlord or other occupants in a manner that requires an immediate end to a tenancy. If they had, the Landlord would not have waited several weeks or months before seeking a remedy through dispute resolution. That being said I am satisfied that this landlord/tenant relationship has become acrimonious with each party becoming entrenched in their positions.

The Tenants have failed to remove the structure enclosing the carport after being issued instructions, in writing, to remove the materials. Furthermore there is evidence before me which indicates that this structure does not comply with municipal by-laws; however this issue is not such a significant risk as to warrant the immediate end to the tenancy.

While there are allegations that locks have been changed at the rental unit, there is no evidence to support the Landlord requested, in writing, a key or that she requested the locks be returned to their original state. Again this is not so significant as to warrant an early end to the tenancy however if proper notification were issued and followed up on it may be cause to end this tenancy with 1 Month Notice under section 47 of the Act.

At the time of the hearing I find that there was insufficient evidence to support the allegation that the Landlord's property or the health and safety of the Landlord and the other tenants are at such significant risk to warrant ending this tenancy without notice. The Landlord may well be able to show that there are grounds to end this tenancy pursuant to section 47 of the *Act* after service of a one month's Notice to End Tenancy; however, I am not satisfied that the circumstances warrant an early end to the tenancy, therefore I dismiss the Landlord's application .

As the Landlord has not been successful with their application I decline to award the Landlord recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application, without 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*.

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Dated: July 11, 2012.

Residential Tenancy Branch