



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a Notice to End Tenancy for cause and to recover the filing fee from the landlord for the cost of this application.

One of the tenants, the landlord's agent and a witness for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is tenant entitled to have the one month notice to end tenancy canceled?

Background and Evidence

The parties agree that this tenancy started on December 01, 2010. There was a written tenancy agreement in place which has been provided in evidence. The monthly rent for this unit started at \$1,100.00 and rent was increased to \$1,147.00 on September 01,

2012. Rent is due on the first day of each month in advance. This tenancy started as a six-month fixed term tenancy which has since reverted to a month-to-month tenancy.

The landlord's agent testifies that the tenants were served a one month notice to end tenancy on August 31, 2012. This notice was placed in the mail slot at the rental unit and has an effective date of October 01, 2012. This Notice gave the tenants two reasons to end the tenancy.

- 1] The tenant is repeatedly late paying rent.
- 2] The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

This notice informs the tenants that they had 10 days to dispute the notice. The tenants disputed the notice on September 07, 2012.

The landlord's agent testifies that the tenants have been repeatedly late paying rent. The landlord has provided documentary evidence showing that in 2011 the tenants were late with their rent for five separate months. In 2012 the tenants were late with their rent for seven separate months. The landlord's agent testifies that for January 2012 there is still \$100.00 outstanding. The landlord's agent testifies that the tenants did pay rent for October on time and this was accepted for use and occupancy only.

The landlord's agent agrees that the landlord did have an agreement with the tenants in 2011 that the tenants could pay their rent late due to the male tenant having been laid off. The landlord's agent testifies that this doesn't mean the tenants could continually pay their rent late every month since that time.

The tenant testifies that when he was laid off from his work in 2011 he did speak to the landlord and they made a verbal agreement between them that the tenant could pay the rent late. The tenant testifies that every month that the tenant knew his rent was going to be late he contacted the landlord and informed him. The tenant testifies that the landlord has never served the tenant with a 10 day notice for unpaid rent.

The landlord's agent testifies that the tenants have been smoking cigarettes and marijuana in the house. The landlord's agent testifies that it is written on the tenancy agreement that the tenants must not smoke in the house. The landlord's agent testifies that when she went to the rental unit to serve the tenants with Notice to end the tenancy she was accompanied by two witnesses. The landlord testifies that all three of them saw smoke and smelled marijuana coming from the tenants' window. The landlord's agent testifies that nobody answered the tenants' door although the window was open and the television set was on. The landlord's agent testifies that she then put the notice through the mail slot of the tenants' door.

The landlord's agent testifies that the tenants have put an aboveground pool in the yard. The landlord's agent testifies that the tenant did not get permission to do this from the landlord had the landlord had asked the tenants to take the pool down as they did not have insurance cover for a pool of this nature. The landlord's agent testifies that the tenants went ahead and filled the pool with water. This pool is now damaging the lawn and is putting the landlord's property at risk. The landlord's agent testifies that if the pool was over filled or was to flood it could potentially flood the basement. The landlord's agent testifies that the landlord had to take out extra insurance cover because of this pool and it has increased the landlord's water bill as the landlord's water to this property is metered. The landlord's agent testifies that gave the tenants an addendum to deal with all the issues that they had with the tenants. This was handed to the tenants on August 27, 2012. However the tenants did not agree with the things documented on this addendum and therefore the landlord withdraws his agreement in the addendum to allow the tenants to have a pool.

The tenant testifies that when they first moved into the property the landlord's parents showed them the house and gave them verbal permission to say they could put up an aboveground pool. The tenant testifies he did have permission from the landlord to put water in the pool after the landlord called and was initially upset that the tenant had not asked the landlord if the tenants could put the pool up. The tenant testifies that later the landlord said the tenants could fill the pool with water if the tenants were going to stay.

The tenant testifies that the landlord did not put this in writing until the landlord sent the tenant the addendum in which it states clearly that the tenants can keep the pool.

The tenant disputes that they or anyone visiting them on the property smoke in the unit or use marijuana. The tenant testifies that you can smell marijuana in the neighborhood and the neighbors smoke this substance on their deck. The tenant testifies that when they have guests, their guests smoke on the back porch and there is an ashtray there for that use. The tenant testifies that he gave up smoking three years ago.

The landlord's agent calls their witness; the landlord's witness testifies that she was with the landlord's agent when the landlord's agent went to the rental unit to drop off the eviction notice on August 31, 2012. The witness testifies that they knocked on the door and there were people inside the unit but nobody answered the door. The witness testifies that the window was open and they could clearly smell marijuana coming from the open window.

The tenant cross examines the witness; the tenant asked the witness if they spoke to anyone at the rental unit. The witness replies they spoke to no one but they could hear voices and noise inside the unit. The tenant asks the witness if she saw anyone in the house. The witness replies no. The tenant asks the witness if she is certain the smell came from the tenants' unit. The witness replies that she thinks it came from the house not the neighbour's balcony or the downstairs window.

The tenant testifies that he believes the landlord wants to evict them because they want to re-model the house and raise the rent. The tenant testifies that the landlord spoke to him about putting in hard floors and knocking a wall down in the rental unit.

The landlord's agent requests that the notice to end tenancy is upheld and the landlord seeks an order of possession effective as soon as possible.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The tenant has argued that he had a verbal agreement with the landlord that he could pay his rent late. The tenant agrees that this verbal agreement started in August 2011 however the tenant argues that since that time he has continued to call the landlord whenever he's been unable to pay his rent on time. The landlord's agent argues that this agreement was only for a short term in 2011 and the tenants have continued to pay the rent late.

By their nature, disputed verbal terms are not clear and are often impossible for a third party to interpret. However I find it unreasonable for a tenant to continue to pay his rent late when a verbal agreement was made in August 2011. However, the landlord has continued to allow this to happen without enforcing the terms of the tenancy agreement and it is not unreasonable for the tenants to think that the landlord has continued to accept late payments. I also find the landlord has not appeared at the hearing today to dispute the tenants testimony that this agreement was in place or for how long the landlord specified to the tenants it would remain in place and any testimony from the landlords agent would be hearsay as the landlords agent was not present at the time the agreement was made. Consequently this reason given on the one month notice to end tenancy will not be upheld.

However I caution the tenants that moving forward, the agreement with the landlord to pay rent on another day other than the first day of each month is at an end. The tenants must ensure their rent is paid on the first day of each month from November, 2012. If

the tenants fail to do so the landlord is at liberty to serve the tenants with a 10 Day Notice to end tenancy for unpaid rent.

The tenant disputes the landlord's evidence that the tenant or a person permitted on the property by the tenant has smoked cigarettes or marijuana in the rental unit. The landlord and the landlords witness both testifies that they saw marijuana smoke and smelt marijuana coming from the tenants' window when they arrived to serve the tenants would notice to end tenancy. The tenant has testified that nobody was home at that time and the television had been left on which the landlord and the witness could have mistaken for voices from the rental unit.

I find on a balance of probabilities that the tenants or a person permitted on the property by the tenant was either smoking cigarettes or marijuana in the rental unit on that day however the smoking of one marijuana cigarette does not constitute sufficient cause to end a tenancy and the landlord has provided no other evidence to support their claim that the landlord's property has been put in significant risk from of marijuana.

The landlord argues that the tenant put up an above ground pool and this is placed the landlord's property at significant risk. However in the landlord's documentary evidence they have provided an addendum which they wanted the tenants to sign. This addendum contains a clause that states the landlord agrees the tenant can put this pool on the property as long as the tenant agrees to maintain the property. Consequently this reason given on the one month notice to end tenancy will not be upheld as the landlord has not shown sufficient cause to end the tenancy based on this reason

Therefore, 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 August 31, 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 their **\$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: October 12, 2012.

Residential Tenancy Branch