



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 an Application for Dispute Resolution by the Tenants to obtain an Order to cancel a Notice to end tenancy issued for cause and to recover the cost of the filing fee from their application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. 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 Notice to end tenancy be cancelled?

Background and Evidence

The parties agreed that the Tenant P.C. entered into a month to month tenancy with the previous management that began on January 1, 2007. Tenant J.S. moved in with P.C. on approximately May 1, 2012. Rent is payable on the first of each month in the amount of \$824.00 and on or before January 1, 2007 the Tenants paid \$387.50 as the security deposit.

The Tenants affirmed that they did not provide copies of their photographic evidence to the Landlord. They acknowledge receipt of the Landlord's evidence on Friday November 23, 2102, and argued that it was received late.

The Landlords confirmed their evidence was submitted late and stated they were delayed in providing the evidence because they are very busy and had to collect all the complaint letters from other tenants and compile all of the information.

The Landlords advised that on October 16, 2012 they posted a 1 Month Notice to end tenancy to the Tenants' door after a police incident which occurred on October 11, 2012. They stated that numerous police, police dogs, and the emergency response team (ERT) showed up at the complex on October 11, 2012 to execute a search warrant. The police evacuated all other tenants and broke open the Tenant's door and took the Tenant J.S. and three of her guests away in handcuffs. They noted that this incident took place over several hours and has caused other tenants to fear for their safety.

The Landlords are seeking to end this tenancy because of the October 11, 2012 incident and advised that the police have been watching that rental unit for several months. They submitted that the police are at the complex on several occasions just watching and that they do not tell the Landlords what they are looking for.

The Landlords indicated that they had attended dispute resolution earlier this year when they attempted to evict the Tenants for not informing them they had bedbugs and for not keeping the rental unit clean. That first Notice to end tenancy was issued June 22, 2012 and the Tenants were successful in having the Notice cancelled.

The Landlords reviewed the Tenants' file during the hearing and advised that three previous warning letters had been issued to the Tenants for issues relating to smoking in the unit, having a dog visiting the unit, and for the presence of bed bugs. All three warning letters were written on or before June 22, 2012 when the previous Notice to end tenancy was issued.

The Landlords confirmed that the Notice to end tenancy issued October 16, 2012 was the direct result of the police attendance on October 11, 2012 and the numerous complaints they have been receiving from other tenants since that occurrence.

The Tenants acknowledged that the police attended their unit and they had to wait until a search warrant was issued before they could enter. J.S. acknowledges that it was a scary situation, even for her, and none of them were arrested as a result of the police attendance on October 11, 2012. She advised that she cooperated with the police and they still broke the door. She said they fixed the door the best they could. P.C. confirmed that he was not at home at the time of the search and that he was not questioned by police afterwards.

J.S. stated that on October 15, 2012 a neighbour called the police to report they saw someone breaking into her unit. When the police arrived it was only them at home and no one had broken in.

The Tenants argued that they are respectful of their community and that the police are always attending this complex for other reasons. They feel they are being victimized by the management but they are trying to co-operate. They noted that no one has inspected their suite since the bed bug treatment and argued that their unit has been cleaned and they currently do not have a presence of bed bugs. They admit that they have a friend who brings his dog to visit and that they are working on getting a medical not to have these visits.

In closing the Landlords stated that they try to work with all of their tenants but the problems after the police executed the search warrant are unbelievable. They try to be fair to all tenants but the other tenants do not feel safe anymore.

J.S. stated that she understood it was a scary night but that she was scared too. Both Tenants stated that they understood that if other tenants are disturbed by their actions or their guests' actions; smoking of marihuana; or not maintaining the cleanliness of their rental unit; and it is not corrected after written notice to do so; the record of these events would form part of the Landlord's case should it again come before an arbitrator for consideration.

Analysis

The Tenants confirmed that they did not provide the Landlords with copies of their photographic evidence in contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlords have not received copies of the Tenants' evidence I find that the Tenants' evidence cannot be considered in my decision. I did however consider the Tenants' testimony.

Rule 4 of the *Residential Tenancy Branch Rules of Procedure* stipulates that if a respondent intends to dispute an Application for Dispute Resolution, copies of all available evidence the respondent intends to rely upon at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution.

In considering the acceptance of late evidence, rule 11.5 of the *Residential Tenancy Branch Rules of Procedure* state that a party may request, at the dispute resolution proceeding, that the Arbitrator accept any evidence that was not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding, as required by the Rules of Procedure, and must satisfy the Arbitrator that the evidence is relevant.

The Tenants served the Landlords with their application on October 22, 2012 and the Landlords did not serve their evidence until November 23, 2012. The Landlords argued that they are very busy and had to collect all of their evidence, primarily letters of complaints from other tenants, which is the cause of the delay in serving their evidence.

After careful consideration of the foregoing, I find that the Landlords failed to comply with the Rules of Procedure in serving their evidence and I hereby refuse to consider the Landlords' late evidence in this decision. I did however consider the Landlords' testimony.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenants in a manner that complies with section 89 of the Act.

The 1 Month Notice dated October 16, 2012 was issued for the following reasons:

- 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

When considering a 1 Month Notice to End Tenancy for Cause the landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

The Landlords provided testimony that the Tenants were issued the Notice because of an incident on October 11, 2012 when police attended the residence to enforce a search warrant and busted the door open. The Landlords did not have evidence as to the nature of the search warrant and simply argued that the actions of the police caused neighboring tenants to become fearful.

Notwithstanding the Landlords' arguments that the police presence on October 11, 2012 may have jeopardized the health or safety of other tenants; interfered with or disturbed other tenants; and put the Landlord's property at risk; I find there to be insufficient evidence to support that this occurrence was caused by the Tenant's actions or by someone they permitted on the property.

Based on the aforementioned I find that the Landlords have not succeeded in meeting the burden of proof for issuing the 1 Month Notice to End Tenancy issued on October 16, 2012, and I therefore cancel the Notice.

Conclusion

As I have determined that the Landlord has not met the requirements of section 47 of the Act to end this tenancy for cause, I am granting the Tenant's application to set aside the 1 Month Notice to End Tenancy and this tenancy shall continue until ended in accordance with the Act.

The 1 Month Notice to End Tenancy, issued October 16, 2012, is HEREBY CANCELLED and is of no force or effect.

As the Tenants have been successful with their application I award them recovery of their filing fee. Therefore, the Tenants may withhold **\$50.00** from their next rent payment as full satisfaction of this onetime award.

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: November 28, 2012.

Residential Tenancy Branch