



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Preliminary Issues

The Landlords advised that they were not served copies of every document that the Tenants submitted into evidence to the *Residential Tenancy Branch* by the Tenants. Specifically, the Landlords were not served copies of letters written to the Tenants by the Landlord October 1, 2012; October 25, 2012; November 27, 2012; and a receiving report dated November 15, 2012.

I advised the parties that the documents which were not served as evidence to the Landlords by the Tenants were provided as evidence in the Landlord's submission to the *Residential Tenancy Branch* and to the Tenants. Therefore, there was no further action required and the documents would be considered as evidence from the Landlords.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on December 5, 2012, to cancel a Notice to end tenancy issued for cause.

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 1 Month Notice (the Notice) issued November 27, 2012 be upheld or cancelled?

Background and Evidence

The Tenants submitted documentary evidence which included, among other things, copies of: the 1 Month Notice to end tenancy for cause (the Notice) and the Tenants' written statement.

The Landlord submitted documentary evidence which included, among other things, copies of: the Landlord's written submission; incident reports outlining the Tenants' behaviour during an inspection; letters issued to the Tenants; the 1 Month Notice; the tenancy agreement; and the move in condition inspection report form.

The parties confirmed that they entered into a month to month tenancy that began on August 1, 2007. Rent is payable on the first of each month and began at \$700.00 per month. The Tenants advised their current monthly rent is \$825.00 per month and that they paid a security deposit of \$350.00 on July 19, 2007.

The Landlord advised that although they have managed this property for over ten years the current property manager, D.A., has only been working with this building since September 2012. The previous property manager had been there for approximately two years (2010 – 2012) and a senior property manager was there prior to the beginning of this tenancy in 2007 to 2010. The Landlord acknowledged that D.A. was assigned this property because the previous proper manager(s) had "let things slide".

D.A. affirmed that the Tenants were provided a notice of entry for an inspection to be conducted on October 5, 2012 by himself and the care taker. He entered the Tenants' suite and did a walk through making a note of what work was required. He stated that he was in and out of the unit very quickly. He did not engage in any discussions with the Tenants during the inspection and thanked them for allowing the inspection. Then on October 25, 2012 he sent the Tenants a letter through Canada Post informing them that "their unit fell short" of what was required and that there would be a second inspection on November 15, 2012.

The Landlord advised that she and another female property manager attended the rental unit on November 15, 2012, for the second inspection. She said they were very polite and took off their shoes as requested by the Tenants, even though they could see bits of food all over the floors. They did a quick walk through and informed the Tenants that it did not appear that they had taken any action to clean their suite. It was at that time that they were met with hostility from the Tenants who became "combative and verbally accosted them". The Landlord stated that Tenant A.B. swore at them telling them to F... off; get the F... off their property; and threatened them.

Upon further clarification the Landlord confirmed the Tenants did not threaten them but rather she and the other female property manager felt at risk because Tenant A.B. stood up and began approaching them as he was swearing at them. They felt threatened, grabbed their shoes, and went outside. She confirmed that no laws were

broken and they did not call the police. The Notice to End Tenancy was issued November 27, 2012.

The property manager D.A. stated that the 1 Month Notice (the Notice) was served to the Tenants by the caretaker on November 27, 2012, by posting it to their door. The Tenants refuted the method of service arguing that the Notice was placed in their mail box.

The caretaker was called into the hearing and confirmed that he has a spare key to the mailboxes but he did not put the Notice in the mailbox. The caretaker affirmed that he knocked on the Tenants' door and when they failed to answer he used a thumbtack and posted the folded letter to their door. The Tenants confirmed receipt of the Notice on November 30, 2012 and argued it was in their mailbox.

In support of the reasons for issuing the Notice D.A. and the Landlord advised the following for each reason:

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

- *Put the landlord's property at significant risk*

During the inspections the Landlords stated they noticed a significant amount of grease on the walls in the kitchen which, in their opinion, represents a fire hazard. They did not provide evidence, other than their written statement and oral testimony, to support their allegation that the presence of grease puts the landlord's property at significant risk. They noted that their insurance premiums had increased due to a recent fire at this building and they were concerned that the condition of the Tenants' unit would cause an additional premium increase if the insurance adjuster inspected their unit.

B) Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord*

The Landlords noted that the *Residential Tenancy Act* does not define damage so they referred to a definition in the Oxford Dictionary which included "harm impairing the value or usefulness of something". They are of the opinion that because the Tenants have failed to maintain and clean the carpets that they have damaged them.

The Landlord and property manager confirmed that they have no proof that the Tenants have engaged in illegal activity. However, they argued that after considering the Tenants' lifestyle, which included smoking inside the rental unit, and the threatening way they dealt with the Landlord, they have adversely affected the security, safety, and physical well-being of the landlord and the other tenants by swearing at the Landlords and creating a fire risk

***C) Tenant has not done required repairs of damage to the unit/site
Breach of a material term of the tenancy agreement that was not corrected
within a reasonable time after written notice to do so***

The property manager pointed to their written submission and argued that their tenancy agreement provided material terms at sections 23, 26, and 28, which stipulated that the Tenants must maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit and must not do, or permit anything that may void the landlord's insurance or cause the landlord's insurance to increase.

The Landlords submitted that they have been working with over twenty other tenants at this building and have allowed them additional time to complete the cleaning if requested. However, given these Tenants' abusive behavior they are not willing to work with them and wish to proceed with the eviction.

The Tenants advised that they cooperated with the October 5, 2012 inspection and that they received the October 25, 2012 letter a few weeks later. They stated that they understood that the letter was telling them that they needed to do some cleaning and they agreed that they had not cleaned their unit in sometime. Prior to the November 15th inspection they did some cleaning. They noted that they never agreed to pay to have a professional carpet cleaning done once a year as they are both on disability and could not afford that.

The Tenants confirmed that they primarily dealt with the onsite care taker and not property managers. They stated that they have not done anything illegal and have not damaged their suite. They do not understand what risk or what damage has been done. They had friends assist them and they tried to clean up their place. They tried to wash nicotine off of the walls, clean floors, and put down some throw carpets. They stated that the only thing they did not do was get a professional carpet cleaner in because they cannot pay for that.

Tenant A.B. acknowledged that he swore at the females during the November 15, 2012 inspection and stated that he knows that was wrong and he is sorry for that. The Tenants both stated that A.B. did not threaten the two females and the only thing he threatened to do was to take the Landlord to arbitration. They also shouted that they thought the Landlord was trying to evict them so they could raise the rent.

Prior to the conclusion of the hearing I Ordered the Landlords to ensure that all future written communications issued to the Tenants are written in a clear and concise manner detailing specific requests.

Analysis

During the course of this proceeding I confirmed that the Landlord did not conduct annual inspections on the Tenants' rental unit during the first four years of this tenancy. Then, on October 1, 2012 they were given notice that an inspection would be conducted and four days later the care taker and a property manager, someone they have never met before, walked through their entire home without saying anything other than thank you. Approximately three weeks later they received a letter dated October 25, 2012, which I find to be very vague and confusing, and which the Tenants understood to mean they had to do some cleaning. Then on November 15, 2012, two females whom they did not know, attended their home and walked through criticizing the manner in which they live and which they cleaned.

Based on the foregoing it was reasonable to conclude that the Tenants felt threatened that their tenancy was at risk. That being said, I do not condone the manner in which A.B. responded to this situation by swearing and yelling at a landlords. The Tenants confirmed during the hearing that they understood that if such behaviour is verified by the Landlord in the future, the record of these events would form part of the Landlord's case should it again come before an Arbitrator for consideration.

I have carefully considered the aforementioned and the documentary evidence and on the balance of probabilities I find as follows:

The 1 Month Notice to End Tenancy cited the following reasons for issuance:

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

- *Put the landlord's property at significant risk*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord*

Tenant has not done required repairs of damage to the unit/site

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Case law provides that a material term is a term written into the tenancy agreement that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

In *Worth and Murray v. Tennenbaum*, an unreported decision of the B.C. Supreme Court, August 18, 1980, Vancouver Registry A801884, His Honour Judge Spencer found at page 5 of his decision:

As a matter of law the various terms of the tenancy agreement may or may not be material to it in the sense that they justify repudiation in case of a breach. It is wrong to say that simply because the covenant was there it must have been material [emphasis added]

Madam Justice Lynn Smith also considered the issue of materiality in *Al Stober Construction Ltd. v. Charles Henry Long*, Kelowna Registry, 52219, 20010525. She notes in paragraph 35 of her reasons:

If the term was “fundamental” to the agreement, the landlord would have rigorously enforced it.

Therefore, as the Landlord did not rigorously enforce sections 23, 26, and 28 of the tenancy agreement during the first five years of this tenancy they cannot consider them as material terms for the purpose of ending the tenancy.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove the reasons for issuing the 1 Month Notice. When considering whether the Tenants cleaned their rental unit to the best of their ability the only evidence before me was disputed verbal and written testimony which I find insufficient to meet the Landlord’s burden of proof.

It is reasonable to consider that smoking inside a rental unit will ultimately cause nicotine to accumulate and that cooking inside a rental unit that does not have an overhead fan would cause grease to accumulate on surfaces inside the rental unit. I note that the manner in which the Tenants clean or keep their home may not be in-

keeping with the way the Landlord would keep house but that does not give cause to end their tenancy.

Conclusion

Upon reviewing the grounds selected for why this Notice was issued, I note that there was in sufficient evidence before me to support the Tenants have put the Landlord's property at significant risk; have engaged in illegal activity; or have caused extraordinary damage to the unit/site or property. Accordingly, I uphold the Tenants' requests to cancel the Notice.

The 1 Month Notice to end tenancy issued November 27, 2012, is HEREBY CANCELLED and is of no force or effect. This tenancy continues until such time it is ended in accordance with the *Residential Tenancy Act*.

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: January 07, 2013.

Residential Tenancy Branch