



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenants confirmed that the landlord handed them a 1 Month Notice on March 15, 2013. The landlord confirmed that he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on March 20, 2013. I am satisfied that both parties served the above documents and their written evidence packages to one another in accordance with the *Act*.

At the hearing, the landlord made an oral request for an Order of Possession if the tenants' application to cancel the 1 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for their application from the landlord?

Background and Evidence

This tenancy commenced originally as a one-year fixed term tenancy for the period from January 1, 2010 until December 31, 2010. Monthly rent at that time was set at \$1,800.00, payable in advance on the 15th of each month. When the initial term ended, the parties signed a new 2-year fixed term tenancy for the period from January 1, 2011 until December 31, 2012. Since then, the tenancy has continued as a periodic tenancy. Monthly rent is currently set at \$1,900.00, payable in advance on the 15th of each

month, plus hydro and heat. According to the terms of paragraph 17 of the Residential Tenancy Agreement (the Agreement) entered into written evidence by both parties, "The Landlord will be responsible for paying property tax, insurance for the property and water and sewage."

The parties agreed that the landlord's original 1 Month Notice cited the following reasons for the issuance of the Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site

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

The landlord failed to complete the second of the two reasons outlined above and, as such, the only reason for ending the tenancy for cause in the landlord's original 1 Month Notice was for the tenants' allowance of an unreasonable number of occupants in the rental unit.

The tenants gave undisputed written evidence that after receiving a copy of the tenants' dispute resolution hearing package, the landlord altered a copy of the 1 Month Notice submitted to the Residential Tenancy Branch (the RTB) and the tenants to add another reason to those listed in his original 1 Month Notice. Attached to his March 22, 2012 evidence package, the landlord attempted to add that the landlord was also seeking to end this tenancy for cause because the tenants had "assigned or sublet the rental unit/site without landlord's written consent." At the hearing, the landlord agreed that he had altered his previous 1 Month Notice after the tenants applied for dispute resolution.

In his March 22, 2013 letter, the landlord noted that he had agreed to rent the premises to the tenants as a single family dwelling. He asserted that the tenants rented out the lower floor as a suite in March 2010. At the hearing, he stated that he learned of their action in 2010, and was told that the people living in the lower suite were members of their family. When the female tenant (the tenant) questioned him on this statement, the landlord modified this testimony to say that they told him at that time that the lower suite occupants were their family or friends. The landlord testified that the tenants told him that they would ensure that the lower suite was vacated, but it took over a year for the lower suite tenants to vacate the property. He testified that he learned that the tenants had re-rented the lower suite to someone else in the fall of 2012. He entered written evidence that the municipality questioned the legality of this secondary suite and he had to obtain municipal approval to legitimize the lower level suite. In issuing the 1 Month Notice, the landlord claimed that the number of people occupying the rental property exceeded the two persons (the two tenants) listed on the Agreement.

The landlord's March 22, 2013 written evidence also identified issues that he had raised with the tenants about his increased water bills charged by the municipality for the secondary suite in this rental property. He maintained that the tenants owed him an extra \$840.00 for 2010, \$890.00 for 2011 and \$890.00 for 2012. He also raised concerns that he did not have fire insurance to cover the secondary suite and claimed that the tenants had broken their Agreement by keeping a dog in their rental unit, in contravention of the Agreement they had signed. The landlord confirmed that he has not submitted an application for dispute resolution to the RTB with respect to this tenancy.

The tenants asserted that the landlord knew that they were using the rental property as a duplex and had given them his oral permission to do so. They said that when they first rented the whole rental home from the landlord, the on-line listing showed it as a duplex and that they could rent out the lower suite. The tenant testified that the landlord knew the original tenant, who performed work for the landlord at one point. The tenant testified that the landlord made no effort to have the rental suite vacated until the tenants told him that he could only raise their rent by way of the procedures set out in the *Act*. The tenants maintained that the landlord issued the 1 Month Notice when they refused his repeated requests to increase their rent and later to recover a portion of the water and sewage bills applied by the municipality to this rental property. The male tenant testified that the landlord issued the 1 Month Notice because he was mad at the tenants' refusal to pay for a portion of the water bill for this rental property.

The tenant testified that the initial tenant, a friend of theirs, vacated the rental unit because he needed a larger place as he now had two female children and one male child living with him. The tenant said that their current tenant is a female who lives in the lower rental suite by herself. The tenant said that the municipality has not yet completed its process of inspecting the secondary suite and giving legal authority to this secondary suite.

Analysis

I should first express my concern regarding the landlord's failed attempt to submit altered evidence regarding the content of the 1 Month Notice he issued to the tenants on March 15, 2013. A landlord cannot alter a signed document that he submitted to the tenants that could lead to an end to their tenancy. I have given no regard to the additional reason cited in the landlord's altered 1 Month Notice. This additional reason for ending this tenancy (i.e., the tenants assigned or sublet the rental unit/site without landlord's written consent) was not included in the original 1 Month Notice and cannot be amended after its issuance and service to the tenants.

I find that the only reason cited in the landlord's original 1 Month Notice that is validly before me is the landlord's application to end this tenancy for cause because the tenants have allowed an unreasonable number of occupants in the unit/site. When a landlord issues such a notice and the tenants dispute the notice, the onus is on the landlord to prove cause for issuing the notice.

In this case, the tenants have not disputed the landlord's claim that someone not listed on the Agreement is residing in a separate suite in the lower level of this rental home. The tenants maintained that the landlord was aware of their previous arrangement with the occupant of the lower suite and the landlord has in fact taken measures with the municipality to bring this suite into compliance with municipal bylaws for secondary suites. Although section 47(1)(c) of the *Act* allows a landlord to end a tenancy for cause for an unreasonable number of occupants in a rental unit, I find that the matter before me is not a contractual issue regarding the contents of the Agreement, but requires a consideration of the reasonableness of the number of occupants that are in the unit. Based on the limited grounds cited in the landlord's 1 Month Notice, I find that the issue properly before me narrows to whether an unreasonable number of occupants currently reside in this rental home.

I find undisputed evidence that at present, the two tenants live upstairs in one separate two bedroom rental unit and a single tenant resides in her separate rental unit downstairs. The tenants also gave undisputed sworn testimony that the lower rental suite is of sufficient size to accommodate the previous tenant and his two children, but not a family requiring a third bedroom. Based on the evidence before me, I find that the landlord has not demonstrated that an unreasonable number of occupants are residing in the rental unit as claimed in the landlord's 1 Month Notice. In fact, it would appear that there is ample room for three people to reside in this rental property. For these reasons, I allow the tenants' application for dispute resolution and cancel the landlord's 1 Month Notice, with the effect that this tenancy continues.

As the tenants have been successful in their application, I allow them to recover their \$50.00 filing fee from the landlord.

Since this tenancy will continue and in accordance with the powers granted to me under section 62 of the *Act*, I make the following order to establish clarity on the existing tenancy and so as to prevent future disputes regarding the interpretation of the terms of the Agreement. I find that paragraph 17 of the Agreement requires the landlord to pay for property tax, insurance for the property, and water and sewage. In reaching this finding, I note that both the landlord and the tenants submitted arguments with respect to this major point of contention as it applies to this tenancy. Since the landlord

believed that he was somehow entitled to recover additional water and utility charges beyond those specified in the Agreement, I believe it is necessary to provide this determination so as to enable this tenancy to continue. For this reason, I order the landlord to comply with the above cited provisions of paragraph 17 of the Agreement and take full responsibility for property taxes, insurance for the property, water and sewage, as his responsibility under the terms of the Agreement he drafted and signed to govern this tenancy.

Conclusion

The tenants' application to cancel the 1 Month Notice is allowed. The landlord's 1 Month Notice of March 15, 2013 is set aside with the effect that this tenancy shall continue.

As the tenant's application to cancel the 1 Month Notice has been allowed, there is no need to consider the landlord's oral request for an Order of Possession.

I order the tenants to recover their \$50.00 filing fee for their application from the landlord by deducting \$50.00 from their next monthly rent payment.

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: April 17, 2013

Residential Tenancy Branch

