



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed, both parties acknowledged receipt of the other's evidence, and neither party raised any objection to the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the *relevant evidence* regarding the facts and issues in this decision.

Issue(s) to be Decided

Have the tenants established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

The undisputed evidence shows that this tenancy began on August 15, 2007, monthly rent is \$1850 and the tenants paid a security deposit of \$500 and a pet damage deposit of \$500 at the beginning of the tenancy.

The rental unit is one side of a duplex, with the other side also owned and rented out by the landlord.

The subject of this dispute is a 1 Month Notice to End Tenancy for Cause, which was dated May 2, 2013 and listed an effective move out date of June 30, 2013. The landlord stated that she served the Notice upon the female tenant by hand delivery on May 2.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenants the Notice.

The causes listed on the Notice alleged that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, put the landlord's property at significant risk, and have caused extraordinary damage to the rental unit.

The landlords' relevant evidence included a copy of the tenancy agreement, photos taken at the rental unit several weeks after the Notice was issued, a written summary of her position in support of issuing the Notice, and an undated submission the landlord said was an email from her former tenants of the other side of the duplex, who have not lived in that rental unit since July 1, 2011, referring to alleged behaviour of the tenants' children.

Cause #1-Significantly interfered with or unreasonably disturbed another occupant or the landlord-In support of issuing the tenants the Notice, the landlord testified that she has had extensive conversations with her other tenants renting the other side of the duplex in which those tenants (hereafter referred to as "B" for side B) told the landlord they were thinking of moving due to the behaviour of these tenants. B did not want their names used.

Although the landlord attempted to bring forth evidence concerning her former tenants in the adjoining duplex, those tenants had not resided in the rental unit in two years.

In response to my question the landlord said that she has issued no written warnings to the tenants about any concerns about their children's behaviour.

In response to the landlord's application, the tenant said that after they had received the landlord's Notice, they approached B in the adjoining duplex as he believed their relationship was cordial. According to the tenant, B said they have never issued any complaints to the landlord and did not have any issues with the tenants. The tenant

said that B were intending on appearing in support of the tenants, but ultimately decided not to get involved with the hearing.

Cause #2-Put the landlord's property at significant risk-The landlord testified that there was a lot of wear and tear in the rental unit and that "things" are being broken. The landlord said that each individual repair in and of itself was not significant, but that that her property was going downhill due to the damage. The landlord went on to say that there was no extraordinary damage, but that she believed the cumulative effect of the damage caused her concern that her property value was declining. The landlord submitted no proof of a declining value.

The landlord testified that it will take more than the two deposits she collected from the tenants to bring the rental unit "back up to snuff" after this tenancy has ended.

The landlord said that she entered the rental unit on May 1 to inspect and noticed the state of the rental unit, which caused her concern enough to issue the Notice on May 2. The landlord confirmed that she re-attended the rental unit on May 29 to take the photos submitted into evidence.

The landlord said she attends the rental unit a number of occasions to see if she can make repairs herself and if necessary, brings in her handyman. The landlord also contended that her handyman informed her that the damage to the screen door, carpet and other areas was beyond reasonable wear and tear. In response to my question, the landlord confirmed that this handyman had not seen the state of the rental unit at the beginning of the tenancy so as to view the progression of any alleged damage.

I was not provided evidence as to whether or not the landlord issues the tenants the required 24 hour written notice prior to each entry.

Some areas of concern raised by the landlord included damage to the lawnmower, damage to the vanity, towel rod, and light fixture in the downstairs bathroom, damage to the front screen door, a broken light switch, missing baseboard heater, a fence panel, and carpet damage.

In response to my question the landlord said that the carpet was 8 years old.

In response to my question, the landlord confirmed not having done an inspection at the beginning of the tenancy and does not have a condition inspection report for the beginning of the tenancy, so as to be able to compare the state of the rental unit at the beginning to the state at the present.

In response, the tenant submitted that the state of the rental unit as of this date was due to reasonable wear and tear for a family with three children. The tenant disputed that the carpet was 8 years old, saying that it was much older than that.

The tenant also contended that the landlord acted unreasonably concerning the lawnmower when they informed her approximately 2 years ago that the lawnmower would not start. According to the tenant, the landlord accused them of leaving the lawnmower in the rain, with the tenant denied. The tenant submitted that the landlord agreed the lawnmower was old and she replaced it with another old, used lawnmower, for which the tenants had to make repairs.

The tenant denied the damage to the screen door or the fireplace, submitting that the fireplace was unplugged at the last inspection by the landlord. The tenant also submitted that although the landlord had to replace the washer and dryer during the tenancy, she replaced those units with old, used models.

Cause #3-Have caused extraordinary damage to the rental unit-During her testimony, the landlord admitted that there was no extraordinary damage; I therefore have declined to consider this issue due to the landlord's admission.

Analysis

Based on the relevant oral and written evidence provided, and on a balance of probabilities, I find as follows:

The landlord bears the burden of proving she has grounds to end this tenancy. The landlord has issued a Notice to End Tenancy listing several alleged causes.

Cause #1-Significantly interfered with or unreasonably disturbed another occupant or the landlord-I find that the landlord submitted insufficient evidence to demonstrate that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord attempted to make references to the alleged disturbances by the tenants' children while she and subsequent tenants lived there several years ago, but I find any allegations from several (2-4) years in the past have no relevance to the Notice being issued on May 2 as being too remote in time, especially in the absence of any substantiation of such.

Additionally, as to the current tenants who have lived in the adjoining side of the duplex for almost two years, the landlord said she has received numerous complaints about the tenants; however the landlord submitted no proof of such allegation. The tenant said he discussed this allegation with those tenants, who denied having a conversation with the landlord.

I was also persuaded by the lack of written warnings with specific times and instances to the tenant about allegations of excessive noise or disturbances from their children, with notice that a continuation of such noise or disturbance could lead to the end of the tenancy.

The party, the landlord in this case, has the onus of proving, during these proceedings, that the Notice is justified and supported. When the evidence consists of conflicting and disputed verbal testimony, as is the case here, then the party who bears the burden of proof will not likely prevail upon a balance upon a balance of probabilities in the absence of independent documentary evidence.

I also find it implausible that the landlord has experienced these issues for nearly 6 years into the tenancy before addressing the issue by serving a Notice to end the tenancy, without formally discussing the matter with the tenants, issue warnings, or providing sufficient evidence that there was a problem.

Due to the above, I find the landlord submitted insufficient evidence supporting this cause listed on her Notice.

Cause #2-Put the landlord's property at significant risk-In the case before me I find the landlord submitted insufficient evidence to support this alleged cause. The landlord failed to supply proof that the rental unit had suffered any damage during this tenancy which has put the property at significant. In reaching this conclusion I considered that the landlord put forth no evidence of the state of the rental unit at the beginning of the tenancy, such as is shown through a condition inspection report. Therefore I could find no way to determine what, if any, damage has occurred, or whether any alleged damage was anything other than reasonable wear and tear.

I also find that the question of damage as described by the landlord, such as carpet, door, or towel rack damage, is a matter for the end of the tenancy, as tenants are entitled to an opportunity to remediate any damage beyond reasonable wear and tear prior to vacating, considering a lengthy tenancy and absence of a condition inspection report.

Due to the above, I find the landlord submitted insufficient evidence supporting this cause listed on her Notice.

Cause #3-Have caused extraordinary damage to the rental unit-As noted above, the landlord stated that she did not consider the alleged damage to be extraordinary. The landlord's advocate attempted to explain that the landlord did not say this in her testimony or meant that; however had I allowed the landlord to retract this statement later in the hearing, she would only be contradicting herself, leading to less credibility.

Due to the above, I find the landlord submitted insufficient evidence supporting this cause listed on her Notice.

I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued May 2, 2013, for an effective move out date of June 30, 2013, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The landlord's 1 Month Notice to End Tenancy for Cause dated May 2, 2013, is not valid and not supported by the evidence and the tenants are granted an order dismissing the Notice.

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: June 07, 2013

Residential Tenancy Branch