



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, PSF, RR, FF

Introduction

This is an application filed by the Tenant for an order cancelling the notice to end tenancy issued for cause, a request for a monetary order for money owed or compensation for damage or loss, an order for the Landlord to provide services or facilities required by law, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of a hearing package and the submitted documentary evidence submitted by the other party, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy?

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to an order to provide services or facilities?

Is the Tenant entitled to reduce rent for repairs, services or facilities not provided?

Background and Evidence

This Tenancy began on January 15, 2013 on a fixed term tenancy ending on January 31, 2014 as shown by the submitted copies of the signed tenancy agreement by both parties. The monthly rent is \$1,095.00 payable on the 1st of each month and a security deposit of \$547.50 was paid on January 15, 2013.

Both parties agreed that the Landlord served the Tenants with a 1 month notice to end tenancy issued for cause dated May 28, 2013. The notice displays an effective date of June 30, 2013. The notice also shows that the Landlord selected 3 reasons for cause. Reason #1) Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk. The Landlord states that the Tenant's pet dog has the potential to cause damage to the rental. The Landlord stated in his direct testimony that he was not aware of any damage caused by the Tenant's dog or that any damage has been caused by the dog.

Reason #2) Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord. The Landlord states that the dog by barking could cause noise complaints. The Landlord stated in his direct testimony that he has received no noise complaints.

Reason #3) Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The Landlord states that the Tenants have breached a material term of the tenancy by having pets, namely a dog. The Landlord is unable to provide a specific term in the Tenancy Agreement that the Tenants are breaching and instead relies on section 4 (B) of the "Security Deposit and Pet Damage Deposit" section of a Residential Tenancy Branch #RTB-1(2013). The Landlord states that by having the pet damage deposit selection as "Not Applicable", the Tenancy was not to have any pets. The Tenants have disputed this admitting that no pet damage deposit was paid, but that several addendum conditions of the tenancy agreement refer to having a pet. #19 in the addendum states, "Should the tenant have a pet the tenant acknowledges and agrees that pet urine...The Tenant therefore agrees that should an animal of theirs damage or soil carpet...at the Tenants cost." #20 states, "Should the Tenant own a dog, the tenant agrees... to keep the dog from roaming and barking at neighbors." #22 states, "The Tenant agrees that any dog poop will be picked up immediately." #23 states, "The Tenant agrees to pay \$300.00 for each stain due to a pet."

The Landlord states that under reason #3, the Tenants have breached addendum #15. Which states, "The tenant agrees that all cars will have Basic Insurance. Cars without valid license plates will be removed from the property at the owner's expense." The Tenant, G.G. admits that he has a truck parked on the property with no license plates, but that it has storage insurance. The Tenant has disputed addendum #15 in the Tenancy Agreement as not enforceable. The Landlord states that the Tenants agreed and signed the Tenancy Agreement that provides for this. The Tenants have confirmed that they were aware of this condition when signing the agreement.

The Tenants have also made a monetary claim of \$800.00 for compensation for the loss of a dishwasher. The Tenant states that the claim is based upon his “arbitrary” calculations that the dishwasher is worth 18% of the monthly rent for 4 occupants and that this takes away from their family time to wash dishes. This is also in conjunction for a request to have the Landlord provide dishwasher that was promised, but not delivered and to be allowed to reduce rent for the loss of the dishwasher. The Tenant states that the Tenancy Agreement provides for a dishwasher and that none have been provided. The Landlord disputes this claim stating that it was a typographical error on his part when he was selecting options on the Tenancy Agreement. The Landlord states that no dishwasher was ever promised and that there are no hook-ups for the dishwasher. The Tenant stated that prior to this dispute that no notifications to the Landlord were given regarding the lack of a dishwasher and that it was not an issue until this dispute. The Landlord states that at the beginning of the Tenancy both parties consented to the Tenant having a dishwasher installed at their own cost, but subject to approval by the Landlord.

Analysis

I accept the undisputed testimony of both parties and find that the Tenant has been properly served with the 1 month notice to end tenancy issued for cause dated May 28, 2013. The Tenant has confirmed receipt of the notice and understands the reasons for cause.

Under reason #1 from the notice, I find that the Landlord has failed to establish a reason for cause. The Landlord has admitted in his direct testimony that he is not aware of any risk to the property. Reason #1 has failed. This portion of the notice is dismissed.

Under reason #2 from the notice, I find that the Landlord has failed to establish a reason for cause. The Landlord has supposed that a barking dog could cause noise complaints, yet the Landlord is not aware of any noise complaints being made. Reason #2 has failed. This portion of the notice is dismissed.

Under reason #3 from the notice, I find that the Landlord's claim that there be no pets to be contradictory. The Landlord's Tenancy Agreement does not stipulate any “no pet” clauses. On the contrary, it states, “Should the Tenants have a pet...”, “Should the Tenant own a dog...”. I find that this is contrary to the Landlord's claim that by not having a pet damage deposit that there was a requirement that there be “no pets”. I find on a balance of probabilities that the Landlord has failed in this reason for cause. The Landlord is at liberty to demand that the Tenant pay a pet damage deposit as per the Act.

Under the reason #3 from the notice, the Landlord has also claimed that the Tenant has an unlicensed vehicle on the property as per addendum #15. I find that although it is clear that the Tenant has breached this addendum condition of the Tenancy Agreement that this term does not constitute a "material term" of the Tenancy. The Tenant has failed to provide sufficient evidence to show that this term of the agreement is unenforceable. This portion of the Landlord's reason for the notice has not been successful. The Landlord is free to make an application for the Tenant to comply with the terms of the Tenancy Agreement. After doing so, the Landlord may, if the Tenant is non-compliant file an application for an Order that the Tenant to comply with the terms of the Tenancy Agreement. If the Tenant fails to comply with the Order, the Landlord may serve the Tenant with a 1 month notice to end tenancy for cause for "non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order."

The Tenant has been successful in their application to cancel the notice to end tenancy dated May 28, 2013. As such, the notice is set aside and the Tenancy shall continue.

I find that the Tenant has failed in their monetary claim of \$800.00 for a dishwasher. I prefer the evidence of the Landlord over that of the Tenant. The Tenant has failed to provide sufficient evidence to show that a dishwasher was promised as opposed to the Landlord's explanation that this was a typographical error and that there is no hook ups for the dishwasher or that there was a promise to provide one. I find that it is unlikely that the Landlord would install hookups and provide a dishwasher for this Tenancy and that the Tenant would not actively pursue such a promise at the beginning of the Tenancy as a term of the Agreement. The Tenant admitted in his direct testimony that this was not an issue until the Landlord served them with a notice to end tenancy. The Tenant's monetary claim is dismissed and the Tenant's request for the Landlord to provide a dishwasher and be able to reduce rent for the lack of dishwasher are dismissed.

As the Tenant has been partially successful in their application, I order the recovery of \$25.00 for the filing fee. The Tenant may withhold \$25.00 from the next months rent one-time upon receipt of this decision.

Conclusion

The Tenant's Application to cancel the notice to end tenancy is granted. The notice is set aside and the Tenancy shall continue.

The Tenant's Application for a monetary order, to Order the Landlord to provide a dishwasher and be able to reduce rent for the lack of a dishwasher is dismissed without leave to reapply.

The Tenant may withhold \$25.00 from the next months rent one-time upon receipt of this decision for recovery of part of the filing fee.

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 21, 2013

Residential Tenancy Branch

