



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC OLC FF O

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied to cancel a Notice to End Tenancy for Cause, for more time to dispute a Notice to End Tenancy for Cause, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to recover the filing fee, and for "other" the details of which specify a monetary request for loss of wages.

The tenants and the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties confirmed that they received evidence packages from each other and that they had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy for Cause. I find that their other claims in her Application for Dispute Resolution are not sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the Notice to End Tenancy for Cause and the tenants' application to recover the filing fee at this proceeding. The balance of the tenants' application is dismissed, **with leave to re-apply**.

The tenants requested additional time to make an application however, they made their application within the permitted 10 day timeline under section 47 of the *Act*, and therefore, the tenants withdrew that portion of the application as it was moot.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A month to month tenancy agreement was entered into by the parties on May 14, 2011. Monthly rent in the amount of \$900.00 is due on the first day of each month. A security deposit of \$450.00 was paid by the tenants at the start of the tenancy.

The tenants confirmed receiving a 1 Month Notice to End Tenancy for Cause (the "Notice") dated May 28, 2013 with an effective vacancy date of June 30, 2013. The tenants disputed the Notice on June 3, 2013 which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed the following reasons on the Notice:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. The tenant has caused extraordinary damage to the unit, site or property.

Regarding reason #1 listed above, the landlord testified that on May 25, 2013 the tenant asked the landlord to "stop whistling" when he was next door painting. The landlord stated that the tenant then stated that the rental unit was falling apart and was "crap".

Regarding reason #2 listed above, the landlord stated that the tenants do not open the windows in the bathroom which has led to mould and other damage in the bathroom. The landlord submitted one black and white photo printout which was dark and blurry in support of his testimony. The landlord also submitted a quotation from a company which lists tile, drywall and other bathroom related items. The male tenant disputed the landlord's testimony. The male tenant stated that there was dry rot in the bathroom when they moved in which was covered up with putty and then painted, and that any damage was there before they moved in.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a Notice, the onus of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

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.

Regarding reason #1 on the Notice, the landlord described the male tenant asking him to stop whistling and that the male tenant complained to the landlord that the rental unit was falling apart and was “crap”. Based on the above, **I find** that the landlord has provided insufficient evidence to support reason #1 on the Notice.

Regarding reason #2 on the Notice, the landlord submitted one black and white photo printout which was dark and blurry in support of his testimony. The landlord also submitted a quotation from a company which lists tile, drywall and other bathroom related items. The male tenant disputed the landlord’s testimony. The landlord did not have any witnesses to present or speak to damage they had seen in the bathroom of the rental unit. The tenants deny that they caused any damage and that the only damage was there, dry rot, was there before they moved in but had been covered up by the landlord with putty and then painted over. As a result, **I find** the landlord has failed to meet the burden of proof to support reason #2 on the Notice listed above due to insufficient evidence. Therefore, **I dismiss** the Notice due to insufficient evidence.

As the landlord has failed to prove that the Notice was valid, **I cancel** the Notice. **I order** that the tenancy continues until ended in accordance with the *Act*.

As the tenants’ application had merit, **I grant** the tenants the recovery of the filing fee in the amount of **\$50.00**. **I authorize** the tenants a one-time rent reduction in the amount of **\$50.00** from a future month’s rent in full satisfaction of the recovery of the filing fee.

Conclusion

I cancel the 1 Month Notice to End Tenancy for Cause due to insufficient evidence. I order that the tenancy continues until ended in accordance with the *Act*.

I authorize the tenants a one-time rent reduction of \$50.00 in full satisfaction of the recovery of the filing fee as the tenants were successful with their application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 02, 2013

Residential Tenancy Branch

