



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to set aside a Notice to End Tenancy for cause, for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order to suspend or set conditions on the landlords right to enter the rental unit; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant's application to cancel the Notice to End Tenancy and the recovery of the filing fee and I dismiss the remaining sections of the tenants claim with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice set aside?

Background and Evidence

The parties agree that this month to month tenancy started on April 01, 2003. Rent for this unit is \$720.00 per month and is due on the first day of each month.

The landlord's agent testifies that the landlord was served with an Order from the City on November 12, 2012 because the tenant had discarded lot of items by the garage and the City wanted these items removed. The landlord's agent testifies that as the tenant was out of the country at the time the landlord's agent called the City and asked for an extension until the tenant returned to Canada to deal with his belongings. The landlord's agent testifies that he went to the tenants unit and found coolers, furniture, a microwave, two fridges, wicker baskets, two patio chairs, 12 plastic chairs, two recliner chairs, a swing, and a tent.

The landlord's agent testifies that on March 22, 2013 he went to the unit and saw the doors open. He returned later with his sister to show the tenant the Orders from the City. On April 10 the landlord's agent testifies that he received a phone call from the tenant who said the landlord's agent's sister had cooked up the story and he wanted an apology.

The landlord's agent testifies that he sent the tenant a letter on April 11, 2013 to warn the tenant to comply with the City Order and remove his belongings from the yard. The tenant failed to so and the landlord filed an application for Dispute Resolution. A hearing was held on July 15, 2013 but this was dismissed with leave to reapply because the landlord had not included an address for service on the application or Notice. The tenant was then served another One Month Notice on July 15, 2013. This Notice had an effective date of July 15, 2013 and gave one reason to end the tenancy that the tenant

has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord's agent testifies that he returned to the tenants unit on July 31 and August 04 and the tenants discarded belongings were still in the yard. The landlord's agent testifies that they received two different Orders from the City. One of these had a different address however the tenant had discarded wood at that address and the landlord wants the tenant to remove that also. The tenant was sent notice to remove these items but has still not complied.

The tenant disputes the landlord's claims. The tenant testifies that the landlord's agents sister came onto the tenants property and throw away some of the tenants belongings when the tenant was away. The tenant testifies that he has removed all the discarded items and the fridges, bar-be-que and microwave have also gone along with the wicker baskets. The tenant testifies that the wood debris is at a different address and is not the tenants. The tenant testifies that these items were removed while the tenant was overseas as the tenant had contacted some friends to remove these items. The tenant testifies that the remaining items are not discarded items and are garden furniture that the tenant uses.

The tenant testifies that he spoke to the City Inspector who was happy with the tenant's yard. The tenant testifies that his yard is planted and is a nice tidy place. The tenant testifies that the City explained that the tenant could not keep appliances in the yard so these were removed. The tenant testifies that his neighbours have never complained about his yard and the tent was put over the swing chair because someone removed the awning. The tenant seeks to have the Notice set aside and seeks to recover the \$50.00 filing fee from the landlord.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has not shown that the tenant has not complied with a warning to remove the discarded items from his yard in order to comply with an Order from the City.

The landlord has not shown that the tenants garden furniture are discarded items and the tenant is entitled to have whatever garden furniture he chooses in the yard. The landlord has also not shown that there have been any recent Orders from the City or that the City is unhappy about the tenant's yard at this time.

Consequently in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, July 15, 2013 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

The tenant is at liberty to file another application to deal with the reminder of the tenants claim.

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: August 23, 2013

Residential Tenancy Branch

