



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC, MND, MNDC, MNSD, FF
Tenants: CNC, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and two of his witnesses and both tenants. The landlord had arranged for another witness related, primarily, to his monetary claim and the tenants had arranged for a witness but due to time constraints neither of these witnesses was called to provide testimony.

While the landlord's Application for Dispute Resolution names a third respondent and the tenants' Application lists only two tenants, one of whom is the third respondent named in the landlord's Application I note that this person is not named as a party in the tenancy agreement. As such, I find the landlord's third named respondent is an occupant and has no standing in this dispute. Therefore, I amend both Applications to exclude the occupant's name.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Background and Evidence

The landlord has provided into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 18, 2012 for a 1 year fixed term tenancy beginning on February 1, 2012 that converted to a month to month tenancy on February 1, 2013 for a monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$750.00 paid; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on July 27, 2013 with an effective date of August 31, 2013 citing the tenant has allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; put the landlord's property at significant risk; the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property and/or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; the tenant has caused extraordinary damage to the unit or property; and the tenant has assigned or sublet the rental unit without landlord's written consent.

The landlord asserts that he is unsure who is living on the property and that he is not able to reach the tenants. He states that he once attended the property and there were 8 people staying in the rental unit. As such the landlord submits the tenants have allowed an unreasonable number of occupants in the unit.

The tenants submit that they are father and son and that they entered the tenancy agreement together but that the landlord was aware the father would not be living at the rental unit. They submit the landlord was aware that the son would be getting a roommate.

The son submits that he and his roommate are the only ones living in the rental property and that while his work takes him out of time for extended periods of time and his roommate may have people over from time to time there is no one else living there. As such, the landlord submits the tenants have sublet or assigned the rental unit without the landlord's written consent.

The landlord submits that the tenant has submitted to the Ministry of Social Development and Social Innovation a shelter document indicating that he is the landlord to the occupant and that the Ministry had contacted the original landlord to confirm if the occupant was a tenant at the property. The landlord confirmed that the occupant was

not a tenant. The tenant submits that as a result of this the occupant was no longer eligible for the shelter allowance of his assistance.

The landlord submits that the tenants or people let onto the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord's witness, who lives in a residential property next door to the dispute address provided testimony.

The neighbour testified that she hears the tenants' friends coming and going at all hours. She states that people start arriving around 8:00 p.m. and continue throughout the night until 5:00 or 6:00 a.m. The neighbour testified that she cannot tell how many people live in the property but that she is fearful of all of the activity.

The landlord submits that tenant has an illegal marijuana grow operation on site and as a result the tenant has put the landlord's property at significant risk; caused damage to the landlord's property and adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submits that the tenant has modified plumbing systems such that there is significant strain on his septic system but over usage. The landlord has provided no documentary evidence showing the volume of sewage or wastewater has been causing any problems with the septic system.

The landlord submits that the tenants have severely damaged a shed that was on the property, specifically that the tenants have removed walls and caused damage to the roof and exterior walls and that they parked a trailer up to the removed wall of the shed. The tenants submit that they made improvements to the shed and were unaware the landlord was unhappy with the changes.

The landlord's second witness identified himself as a private investigator who had been hired by the landlord to monitor activity on the residential property during the hours from 11:00 p.m onward on the nights of August 28 and August 29.

The witness testified that on both nights he saw several pedestrians; two vans; three bikers; a dark vehicle and a female entering and exiting the property over several hours on both nights/mornings.

The tenants submit that they were never informed by the landlord that there were an problems with the property or the tenancy nor were the given an opportunity to make things right with the landlords' concerns.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or
 - ii. Put the landlord's property at significant risk;
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property, or
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
- d) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property; or
- e) The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34.

While the landlord has presented several items to consider as grounds to end the tenancy I make the following findings:

- I accept the tenants were not provide any warnings by the landlord that he had concerns with the tenancy or the condition of the property or buildings;
- I find the landlord did not provide an opportunity to the tenants to repair any damage to the shed;
- While the landlord submits the tenant is engaged in illegal activity that has caused damage to his property and adversely affects the quiet enjoyment of another occupant or the landlord, I find:
 - The tenant testified that his marijuana grow operation is legal and that is has a permit to grow marijuana. The burden rests with the landlord to provide evidence that the activity is illegal and I find the landlord has failed to provide any evidence to show that the grow operation is illegal;
 - Further, even if the grow operation were illegal the landlord submits that the activity has adversely affected the quiet enjoyment of another occupant, however as the landlord does not live on the property and the

neighbour lives on a different residential property I find that there are no other occupants on the residential property and the landlord provided no evidence that his quiet enjoyment was adversely affected; and

- As to damage to the property as a result of the tenant's marijuana grow operation the landlord's position that his septic system is at risk is not supported by any documentation of any current or anticipated problems.
- As noted above, the neighbour is not considered another occupant of the residential property and as such, the landlord cannot rely on a ground that the tenant significantly interfered with or unreasonably disturbed another occupant to end the tenancy.

I accept that while the landlord has arrived at the rental property and there have been as many as 8 people on site at the time, he has not provided evidence to substantiate that that many people occupy the rental property as compared to merely being guests for a short period of time.

Residential Tenancy Policy Guideline #19 stipulates that an assignment is the act of transferring all or part of a tenant's interest in or rights under a tenancy agreement to a third party who becomes the tenant of the original landlord. The Guideline goes on to define subletting as the granting of a lease to a third party with the original tenant still obligated to the landlord from the original tenancy agreement.

In relation to the landlord's claim that the tenants have sublet or assigned, I find that one of the original tenants still lives in the property and as such has not assigned his rights or obligations to any other party. I further find that as neither party provided me a copy of a shelter form from the Ministry, I am not able to determine if the form constitutes a sub tenancy agreement.

I find the landlord failed to provide any warnings to the tenants that the condition of the property, specifically the shed and the septic system or that their actions would result in an ending of the tenancy should they fail to correct them.

For these reasons, I find the landlord has not established cause to end the tenancy and I dismiss this portion of the landlord's Application.

As the landlord has not provided the tenants with an opportunity to make any repairs to the shed and the tenancy is not over, I find the landlord's Application to claim for compensation for the repair of the shed is premature and I dismiss this portion of the landlord's Application with leave to reapply.

Conclusion

I grant the tenant's Application to cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 27, 2013 and find the tenancy remains in full force and effect.

However, I caution the tenants that they have been sufficiently warned of the landlord's concerns and that failure to repair the shed or conduct themselves in a manner that is contrary to the *Act*, regulation or tenancy agreement may result in the landlord issuing a new notice to end tenancy.

I particularly caution the tenants that despite the father not living on the property and the son being away for work for significant lengths of time they are the ones who remain responsible for the roommates behaviour at all times during the tenancy.

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: September 13, 2013

Residential Tenancy Branch

