



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC; FF

Introduction

This Hearing dealt with the Tenant's application filed September 5, 2013, to cancel a *One Month Notice to End Tenancy for Cause* issued September 4, 2013 and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that the Tenants served the Landlords with the Notice of Hearing documents by registered mail sent September 6, 2013. The Tenants served the Landlords with copies of their documentary evidence by overnight courier sent October 9, 2013.

It was also determined that the Landlord served the Tenants with copies of their documentary evidence on October 5, 2013.

Issue to be Decided

- Should the Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. The tenancy started on July 1, 2013 for a fixed term of two years, ending on June 30, 2015. Monthly rent is \$2,700.00 due on the first day of each month. The Tenants paid a security deposit in

the amount of \$1,350.00 and a pet damage deposit in the amount of \$675.00 at the beginning of the tenancy. Rent does not include utilities.

A copy of the Notice to End Tenancy was provided in evidence. The Landlords seek to end the tenancy for the following reasons:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlords testified that the Tenants did not pay the utilities (sewer and water) when they were due. The Tenants testified that the Landlords did not provide them with a copy of the bill and that the Municipality would not send the Tenants a copy of transfer those utilities into the Tenants' name because they must stay in the title holders' names. The Landlords stated that the amount of the bill was identical to the amount the Tenants paid on their own property. They agreed that they did not provide the Tenants with a copy of the utility bill.

The Landlords testified that the Tenants have put their property at risk because the Tenants did not purchase tenant's insurance, contrary to a term of the tenancy agreement. The Tenants testified that they did not realize it was a term of the tenancy agreement, but that they purchased insurance once the Landlords pointed out that it was a term of the tenancy agreement.

Both parties gave testimony with respect to other issues surrounding the tenancy, which are not relevant to the Tenant's application to cancel the Notice to End Tenancy. Therefore, I have not recorded the parties' testimony with respect to a pending sale of the rental property or a pending foreclosure.

Analysis

When a landlord seeks to end a tenancy, the onus is on the landlord to prove on the balance of probabilities that the tenancy should end for the reasons indicated on the notice to end tenancy. In this case, I find that the Landlords have not provided sufficient evidence to support the Notice.

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

When a tenant is required to pay utilities and the utilities are in the landlord's name, it is reasonable to expect the landlord to provide a copy of the utility bill to the tenant in order to prove the amount owing. The Landlords did not provide the Tenants or the Residential Tenancy Branch with a copy of the bill for sewer and water. In any event, the tenancy is only 3 ½ months old and I do not find that the Tenants' not paying the utility bill has put the Landlords' property at significant risk.

Nor do I find that the Tenants' failure to purchase tenant's insurance at the beginning of the tenancy has put the Landlords' property at risk. Tenant's insurance covers a tenant's belongings only, not the rental property itself.

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In order to support this reason to end the tenancy, the Landlords must provide sufficient evidence that the Tenants:

1. breached a **material term** of the tenancy agreement; and
2. that the breach was not corrected within a reasonable time after **written notice** to do so.

Residential Tenancy Policy Guideline 8 provides, in part:

"A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party **in writing**:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy."

I find that the Landlords provided insufficient evidence that they had informed the Tenants in writing that the Landlords believed the Tenants had breached a material term(s) of the tenancy agreement; or that the Landlords provided a deadline to correct the problem; or that the Landlords would end the tenancy if the problem was not fixed by a reasonable deadline.

For these reasons, I find that the Landlords have not provided sufficient evidence that the tenancy should end for the second reason provided on the Notice.

I find that the Notice is not an effective notice to end tenancy and therefore the Tenants' application to cancel it is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants' application had merit and I find that they are entitled to recover the cost of the filing fee from the Landlords. Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct \$50.00 from future rent.

An information sheet accompanies this Decision and includes a link to the Residential Tenancy Branch's website, where the parties can find the Residential Tenancy Act and Regulation as well as other guidelines and policies. I encourage the parties to acquaint themselves with the provisions of the legislation so that they are aware of their rights and responsibilities under the Act.

Conclusion

The Notice to End Tenancy issued September 4, 2013, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants may deduct **\$50.00** from rent due to the Landlords in recovery of the cost 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: October 22, 2013

Residential Tenancy Branch