



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPC MND MNDC FF

For the tenants: CNC RR FF O

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for cause, for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenants applied to cancel three 1 Month Notices to End Tenancy for Cause, all issued around the same time period, for authorization to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, to recover the filing fee, and “other” which the details of dispute indicate recovery of monies paid for heat since the start of the tenancy.

The tenants and the landlord attended the teleconference 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 this circumstance the parties indicated several matters of dispute on their respective Applications for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy for the tenants, and for the landlord, the application for an order of possession based on cause. I find that not all the claims on the respective Applications for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 1 Month Notice to End Tenancy for Cause, (the "1 Month Notice") of which three 1 Month Notices were issued in a short time period, and the landlord's application for an order of possession based on cause at this proceeding. The balance of the tenants' and the landlord's applications are dismissed, with leave to re-apply.

At the outset of the hearing, the landlord indicated that she had a witness; however, the witness did not want to provide their name due to concerns related to the tenants. The landlord was advised that the witness must provide their full name or the witness would not be permitted to testify during the hearing, and as a result, the landlord indicated that she did not have a witness. During the hearing; however, the landlord was overheard whispering to a third person. The landlord's testimony must be weighed in light of this given the possibility of the landlord repeating evidence from the unknown party. The tenants did not call their witness and as a result, the tenants' witness did not provide testimony during the hearing.

During the hearing, the landlord agreed to withdraw two of three 1 Month Notices that the tenants have received from the landlord. The landlord withdrew both 1 Month Notices that were dated December 26, 2013. As a result, I have only considered the 1 Month Notice dated December 31, 2013 at this proceeding, and deem the two December 26, 2013 1 Month Notices withdrawn by the landlord to be of no force or effect as a result.

Issue to be Decided

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

Background and Evidence

A fixed term tenancy began on May 1, 2013, and reverted to a month to month tenancy after January 1, 2014. Monthly rent in the amount of \$1,300.00 is due on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$325.00 were paid by the tenants at the start of the tenancy.

The tenants confirmed receiving the 1 Month Notice dated December 31, 2013 on December 31, 2013, with an effective vacancy date of January 31, 2014. The tenants disputed the 1 Month Notice on January 2, 2014 which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed the following reasons on the 1 Month Notice dated December 31, 2013:

1. The 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.
2. The tenant has not done required repairs of damage to the unit.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Regarding reason #1 listed above, the landlord alleged that the tenants have been smoking “pot”, however, confirmed that she has not reported her concerns to the police and that she did not submit any documentary evidence such as a police report or other supporting evidence that illegal activity had been committed by the tenants related to reason #1 listed on the 1 Month Notice dated December 31, 2013. The tenants denied smoking “pot” as alleged by the landlord.

Regarding reason #2 listed above, the landlord alleged that reason #2 related to the tenants removing a fence that the landlord “intended to build”. The landlord submitted photos of what the landlord stated “the fence would have looked like”; however, the landlord confirmed that she did not have any photos of what the alleged fence looked like at the start of the tenancy and what the fenced looked like at the time she submitted her application for dispute resolution in January 2014. The tenants testified that the fence was not as described by the landlord and that only two stakes were in the ground with material tied between them that could result in a tripping hazard for their child, so they removed the two stakes as it was a tripping hazard.

Regarding reason #3 listed above, the landlord alleged that the material term the tenants had breached, was smoking in the rental unit. The tenancy agreement addendum #2 reads:

“2.) Smoking indoors is not permitted. A refresh fee, equivalent to 1 months rent, will be applied for Smoking inside the premises. Should the amount of the refresh exceed the security deposit, additional charges will be paid by the Tenant.”

[reproduced as written]

The tenants denied smoking inside the rental unit, and stated that after September 15, 2013, when the landlord advised them not to smoke in the garage which was attached to the house, they agreed they would not smoke in the garage. The landlord referred to a letter dated September 25, 2013, indicating that “Daniel” witnessed tenant “JS” smoking in the garage, which tenant “JS” denied during the hearing. The landlord referred to a letter dated September 25, 2013, indicating that “Jamie” witnessed tenant “JS” smoking in the garage, which tenant “JS” had already denied during the hearing as the letter was in relation to the same date as the earlier letter.

The landlord referred to a January 5, 2014, letter from her son claiming that in September 2013, the son witnessed the tenant smoking in the garage, which the tenants denied. The landlord later in the hearing referred to a December 15, 2013 , letter from “ML”, claiming that he smelled smoke from inside his unit, which was a different rental unit than the tenants’ rental unit. The tenants denied smoking inside the rental unit at any time, and stated that if smoked was smelled by the landlord or “ML”, then it was possible that when they were smoking outside which was not against the term included in the tenancy agreement addendum, that the smell of smoke was coming from outside but that it was not likely as “ML” was located at the other side of the building. The landlord stated that she waited three months between the tenants smoking and issuing a 1 Month Notice as she “didn’t think it was enough” to evict the tenants.

The landlord then alleged a second breach of a material term by the tenants, but was unable to confirm details of how the tenants had been advised in writing of an alleged second breach of a material term that was not corrected within a reasonable time after written notice to do so.

Analysis

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

When tenants dispute a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month 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 1 Month Notice, the landlord failed to provide any supporting evidence that illegal activity had been committed by the tenants. The landlord confirmed that she had not called the police and did not have any documents such as police report to support that the tenants committed an illegal activity. Based on the above, **I find** that the landlord has provided insufficient evidence to support reason #1 on the 1 Month Notice.

Regarding reason #2 on the 1 Month Notice, the landlord alleged that the tenants removed a fence and that the photos provided support what the photos “would have looked like”. The landlord failed to provide evidence to support what the fence looked like at the start of the tenancy and at the time she submitted her application. I find the tenants’ version that he removed two stakes that were a tripping hazard, to be an equally probable version of events, and as a result, **I find** the landlord has failed to meet the burden of proof to support reason #2 on the 1 Month Notice, due to insufficient evidence.

Regarding reason #3 on the 1 Month Notice, the landlord alleged that the tenants have been smoking inside the rental unit contrary to the tenancy agreement addendum. The tenants admitted to smoking on one occasion in the garage of the rental unit, but denied smoking in the garage once notified by the landlord. The tenants stated that smoking outside of the rental unit and garage does not violate their tenancy agreement. I find that the tenants’ version that they smoked outside and that the smell of smoke could possibly be smelled indoors, is just as probable as the landlord’s version of events. Furthermore, I find that smoking outside the rental unit does not violate the tenancy agreement or addendum as written. As a result, **I find** the landlord has failed to meet the burden of proof to support reason #3 on the 1 Month Notice, due to insufficient evidence. This is supported by the landlord admitting during the hearing that she waited three months to issue a 1 Month Notice as she didn’t feel that smoking “was enough” to evict the tenants.

As the landlord has failed to prove that the 1 Month Notice was valid, **I cancel** the 1 Month Notice dated December 31, 2013. **I order** that the tenancy to continue until ended in accordance with the *Act*.

As the tenants' application had merit, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**. **I grant** the tenants a one-time rent reduction of **\$50.00**, which may be deducted from rent for a future month on a one-time basis, in full satisfaction of the recovery of their \$50.00 filing fee.

As the landlord's application did not have merit, **I do not grant** the landlord the recovery of their filing fee.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated December 31, 2013, has been cancelled due to insufficient evidence. I order that the tenancy continues until ended in accordance with the *Act*.

The tenants have been granted a one-time rent reduction of **\$50.00** in full satisfaction of the recovery of their \$50.00 filing fee, as the tenants' application had merit.

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: February 20, 2014

Residential Tenancy Branch

