



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MND, MNS,D, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for damage to the unit;
3. To Keep all or part of the damage deposit;
4. For a monetary order for money owed; and
5. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel an a one month notice to end tenancy (the, "notice"); and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and 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 at the hearing.

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 each party has indicated several matters of dispute on their Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the landlord's application to an order of possession. The balances of their respective applications are dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission

first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the notice to end tenancy issued on December 16, 2013, be cancelled?
Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on July 15, 2013. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenants.

The parties agreed that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on January 31, 2014.

The reason stated in the notice to end tenancy was that the tenants have:

- significantly interfered with or unreasonably disturbed another neighbors or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- The tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property.
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another neighbor or the landlord.

The landlords testified that the tenants have significantly interfered with the neighbors as they continue to allow their dog to run at large. The landlord stated the dog also runs at large on his property. The landlord stated the tenant also disturb by noise the neighbours

The landlord testified that the tenant has engaged in illegal activity as they are running a business on the property.

The landlord testified that the tenants have breached the condition of tenancy as they did not cleaned the chimney in December 2013 and burning unseasoned wood is illegal as it can start a fire.

The tenants deny that their dog is running at large and interfering with the neighbors or the landlord.

The tenants deny that they are conducting any illegal activities on the property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenants have:

- significantly interfered with or unreasonably disturbed another neighbor or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- The tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property.
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another neighbor or the landlord.

In this case, the reason the notice was issued was the tenant has significantly interfered with or unreasonably disturbed another neighbor. However, the Residential Tenancy Act does not deal with disputes between two neighbors. If the tenant's dog is running at large in the neighborhood or if there are noise complaints, those issues are to be dealt with by the local authority and the local authority can investigate the complaints and issue fines if appropriate or take alternative actions as they see appropriate.

The landlord has alleged an illegal activity by running a business; however, the landlord has not provided any evidence to support what illegal activity was committed, or what statute of law, regulation or bylaw that has been violated. As an example, selling prohibited substances (drugs) on the property would be an offence under the Controlled Drugs and Substance Act.

Further, the landlord has alleged other reasons, such as a breach of a material term of the tenancy agreement, that the tenants have caused extraordinary damage to the unit, site and property and put landlord property at risk. However, those were not reasons given in the notice to end tenancy and therefore not for my consideration at this hearing.

Therefore, I grant the tenants' application and cancel the 1 Month Notice to End the Tenancy for Cause, issued on December 16, 2013.

As both parties paid a filing fee, I decline to award either party the cost to recover the filing fee from the other party.

Conclusion

The tenants' application to cancel a one month notice to end tenancy for cause is granted. The landlords' application for an order of possession is dismissed.

The balances of their respective claims were dismissed with leave to reapply.

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: February 17, 2014

Residential Tenancy Branch

