



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") to end the tenancy early and obtain an Order of Possession.

The Landlord and both Tenants appeared for the hearing and no issues in relation to the service of the hearing documents under the *Residential Tenancy Act* (the "Act") or the service of evidence under the Rules of Procedure, were raised by any of the parties.

The hearing process was explained and the participants were asked if they had any questions. The Landlord and the female Tenant provided affirmed testimony during the hearing and all the 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. Only the Landlord provided documentary evidence prior to the hearing.

I have reviewed the evidence and testimony presented for this hearing; however, I refer to only the relevant facts and issues in this decision.

At the start of the hearing, it was established that the Landlord had already issued a notice to end tenancy for unpaid rent or utilities to the Tenants in February, 2014 and that the Tenants have disputed this notice. As a result a hearing has been scheduled on March 25, 2014 to hear this matter along with monetary claims made by both parties.

Issue(s) to be Decided

- Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The Landlord testified that this tenancy of the upper portion of a single family property started on August 1, 2013; however the Tenants were allowed to move in earlier. The Tenant testified that they moved in on July 13, 2013 being two days after the written tenancy agreement was signed by the parties. Both parties agreed that the tenancy is for a fixed term of six months which then continues as a month to month tenancy. Rent was established in the amount of \$1,180.00 payable by the Tenants on the first day of each month.

The Landlord testified that the Tenants have not paid any rent for February or March, 2014 as they have put a stop payment on funds which are paid to the Landlord on the Tenant's behalf by a third party organisation.

The Landlord alleges that the Tenants are smoking cigarettes and marijuana inside the rental suite when this is strictly prohibited by the written tenancy agreement entered into by the parties. The Landlord claims that the smoke is toxic and is preventing her from renting out the lower portion of the property to potential renters because the ventilation system of both portions of the property is connected. This is causing her to lose potential revenue from the devaluing of the lower suite as a result of smoke damage which the Landlord does not want to expose potential renters to.

The Landlord also claims that the smoke damage is going to cost her a significant amount of money to rectify through the use of professional air cleaning services and renovations to remove the smell. The Landlord provided an invoice showing the potential cost of doing such cleaning in the amount of \$675.00. The Landlord also testified that her property could be at risk for fire as a result of the Tenant's smoking inside the rental suite.

The Landlord testified that the Tenants are prohibited from having pets and have come to own a cat which defecates in the gravel area outside of the lower portion of the house which she has seen on a number of occasions; the Landlord again claims that this is preventing the rental of the lower portion of the property to new renters. The landlord provided a photograph which shows a black cat outside the rental suite.

The Landlord testified that she had done a number of inspections of the Tenants' rental suite with witnesses where she could smell cigarette and marijuana smoke in the rental suite. As a result, on one of these occasions, the Landlord called the RCMP who visited the rental suite. The Landlord testified that the RCMP confirmed that there was no

marijuana grow operation ("grow op") in the rental suite and no further action was going to be taken.

The Landlord provided an e-mail from a witnesses and a letter from a potential renter who had attended with the Landlord. Both witnesses state that they smelt cigarette and "pot" smoke inside the rental suite. The Landlord testified that the wording in one of the witness e-mail statements was prepared by her and then agreed to by the witness.

The Landlord also presented an electrical utility bill which indicates a high amount of electrical usage for the rental unit in the months of January and February, 2014. The Landlord submitted that this was evidence supporting the fact that the Tenant's are involved in a grow op.

The Tenant disputed the Landlord's evidence and pointed out that the electricity utility shows similar usage for the same periods that related to the previous year. The Tenant submitted that this year had been a particularly cold winter and this explains the reason why the two months claimed by the Landlord were higher than others but relatively the same when compared to the same months in the previous year.

The Tenant admitted that her son had been smoking marijuana in the rental suite and that shortly afterwards the Landlord had entered the rental suite and subsequently discovered the smell and called the RCMP. The Tenant testified that the RCMP officer (whose name was provided), confiscated a small amount of marijuana from her son and no further action was taken. The Landlord testified that she had chastised her son about this incident but other than this incident, denies smoking inside the rental suite. The Tenant did admit to smoking cigarettes and marijuana but that this was done on the balcony of the property on an occasional basis. In support of this, the Tenant pointed to the Landlord's evidence which contains a breach letter on September 20, 2013 about a number of issues but goes on to state that the Landlord was happy with the Tenants keeping the agreement to keep the house smoke-free.

The Tenant stated that the male Tenant does own a cat but the cat was not necessarily responsible for defecating outside the lower portion of the house on the gravel. The Tenant pointed out that there were many neighbourhood cats that used this area to defecate in.

The Tenant was questioned about an abusive written notice which had been posted in the door of the rental suite which asked visitors coming to the house to go away if they had not called the Tenants beforehand. The female Tenant testified that this had been

placed there by the male Tenant as he often had visitors who would visit him late at night wanting to buy drugs.

The Landlord testified that she is frustrated that the Tenants have not paid any rent for two months and they can just sit there and do nothing. The Landlord fears for the potential costs associated with the tenancy as she is on low income.

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is **only** available to the Landlord when the circumstances of the tenancy are such that it is unreasonable for a Landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause.

At the dispute resolution hearing, the Landlord must meet a burden of proof and provide convincing evidence as to why the tenancy should be ended earlier than if a tenancy were to be ended with a notice under Section 47 of the Act. .

The Landlord submitted through her evidence that the Tenant was engaged in an illegal grow op inside the house which was affecting her ability to rent out the property to potential new renters and that this was devaluing the house as well as jeopardizing the safety and insurance of the house due to a fire risk. To support this claim, the Landlord presented a utility bill which showed January and February 2014 electricity payments were higher than the previous months in 2013.

However, I find that the Landlord has provided insufficient evidence that such an operation exists inside the rental suite; this evidence could have been achieved through the use of photographs and although a number of photographs were submitted, none relate to a grow op. The Landlord and Tenant both testified that the RCMP confirmed that no such grow op existed inside the house and I also find that the Tenant's explanation of the high electricity usage in January and February, 2014 is plausible based on a colder winter in 2014 and the usage being the same relative to similar months of the previous year.

I have placed little evidentiary value on the e-mail statement which was prepared by the Landlord for the witness to agree and sign as well as the statement from the potential renter who indicated the presence of smoke inside the rental suite. These documents were not sworn or notarised as evidence and these witnesses were not made available for the hearing to present the evidence and be subject to cross examination.

The Landlord provided sufficient evidence on how cigarette and marijuana smoke can significantly affect one's health and how the presence of such smoke can devalue and damage a property which could result in monetary loss to the Landlord. However, the Landlord has failed to provide sufficient evidence that the alleged smoking of cigarette and smoke inside the house, which the Tenants deny, has caused these problems.

The Landlord's evidence indicates the issues of the Tenant's having a pet and smoking inside the rental unit were attempted to be dealt with by the Landlord in the form of a written breach letter issued to the Tenants on September 20, 2013. Whilst, I acknowledge that the Tenants were not allowed to have a pet during the tenancy as per the written tenancy agreement, the Landlord has not provided sufficient evidence to show the Tenant's cat is responsible for the impact on the tenancy that the Landlord is alleging. I further find that it would have been more appropriate for the Landlord to deal with these two issues through the remedies available under Section 47 of the Act following the issuing of the breach letter in September, 2013.

After considering all of the evidence presented by both parties in this case, I find that the Landlord has not established that it would be unreasonable or unfair to force her to wait for a one month notice to end tenancy for cause to take effect.

The Landlord expressed concerns about her monetary losses and ability to end the tenancy during the hearing. However, the Landlord stated that she had already made an application for an Order of Possession for unpaid rent and other monetary losses and these will be dealt with in the upcoming hearing on March 25, 2014.

Conclusion

For the above reasons, I dismiss the Landlord's application.

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: March 13, 2014

Residential Tenancy Branch

