



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC

For the landlord: MNDS, OPC, MNDC, FF

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 tenant applied for an order cancelling the landlords’ 1 Month Notice to End Tenancy for Cause (the “Notice”).

The landlords applied for an order of possession for the rental unit due to alleged cause, a monetary order for money owed or compensation for damage or loss, for authority to retain the tenant’s security deposit, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties provided affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party’s evidence. There were no issues regarding the service of the applications.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

As a preliminary issue, I have determined that the portion of the landlords’ application dealing with a request for monetary compensation and retention of the tenant’s security deposit is unrelated to the primary issue of disputing or enforcing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the landlords’ applications and

dismissed those portions of the said application without considering any of the merits of the monetary claims of the landlords, with leave to reapply

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause and on the landlords' application seeking an order of possession for the rental unit.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlords' 1 Month Notice to End Tenancy for Cause?

Are the landlords entitled to an order of possession for the rental unit based upon their 1 Month Notice to End Tenancy for Cause?

Background and Evidence

The tenant submitted that the tenancy started in January 2000, and the landlords submitted that the tenancy began on April 1, 2000. The tenant paid a security deposit of \$325 at the beginning of the tenancy. There is no written tenancy agreement.

The testimony suggests that the current monthly rent is \$697.95.

Pursuant to the Rules, the landlords proceeded first in the hearing to explain and support the Notice.

The landlord testified that he served the tenant a 1 Month Notice to End Tenancy for Cause on or about January 24, 2014 by attaching it to the tenant's door, listing an effective move out date of February 28, 2014.

The causes listed on the Notice alleged that the tenant has caused extraordinary damage to the rental unit and has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlords' relevant documentary evidence included a written explanation in support of their application, a copy of the Notice, written communication with the tenant, a witness letter, and two letters from local real estate agents.

In support of their application and Notice, the landlords submitted the tenant is a hoarder and that she piles debris and clutter in front of the baseboard heater, causing a

fire hazard, that the piles of debris and clutter are placed in front of the hot water tank and electrical junction box, preventing access and creating a potential health and safety risk, and have placed obstacles in the hallways, stairs and living spaces, further creating a health and safety risk.

The landlord further submitted that the tenant has kept a pet and that she is not allowed a pet, in this case, a cat.

The landlord further submitted that the tenant has committed extraordinary and willful damage to the rental unit, such as allowing mold/mildew in the bathroom, breaking windows, putting chewing gum in the carpet, creating water damage due to not properly using a shower curtain and flushing large objects in the drains.

The landlord stated he was in the process of selling the residential property and that he is prevented from so doing due to the condition of the rental unit created by the tenant.

In support of his submissions of alleged damage and hoarding, the landlord provided two letters from real estate agents, one being from the landlord's agent.

In response, the tenant's advocate stated that there was a measure of untidiness in the rental unit, but that the matter has been addressed and resolved with the help of the tenant's support worker.

The advocate pointed out that since the tenancy began in 2000, there have been no repairs or updates and that the issues complained of by the landlord are the responsibility of the landlord to repair and maintain the premises.

The advocate submitted that the tenant received the landlord's Notice in retaliation for not agreeing to the landlords' illegal rent increase, which sought an increase to the \$1000 range.

The advocate submitted that the tenant is not in violation of a material term of the tenancy as there is no written tenancy agreement.

The tenant testified that her son broke a window a number of years ago, but that she had it fixed. The tenant denied breaking any other windows.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Tenant's application-

I grant the tenant's application.

The landlord was required to prove the causes listed on the Notice and I find that the landlord has not presented sufficient evidence to demonstrate that tenant has caused extraordinary damage to the rental unit and has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

In reaching this conclusion, I find I could not rely on the landlords' real estate agent to demonstrate and prove that the tenant has allowed the uncontrolled growth of mold, as I cannot accept a real estate agent to be a mold expert, absent credentials.

I was further persuaded that the landlord has not shown that the tenant has caused extraordinary damage to the rental unit, due to this tenancy being 14 years in length and due to the lack of evidence that the landlord has provided any upkeep or maintenance during the tenancy. I accept that some of the issues complained of by the landlord may very well be the landlords' obligation to address, pursuant to section 32 of the Act requiring the landlord to repair and maintain the rental unit so that it complies with health, safety and housing standards. I find it reasonable that during the 14 years of this tenancy, the rental unit has suffered reasonable wear and tear.

I was further persuaded by the lack of any photographic evidence to bolster the claims of the landlord that the tenant is a hoarder or has caused damage beyond reasonable wear and tear.

As to the landlords' claim that the tenant has breached a material term of the tenancy agreement, the *Act* stipulates that a landlord is responsible for providing a written tenancy agreement. A term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. As the parties did not have a written tenancy agreement which clearly communicated that the tenant was not allowed a pet and as the tenant disagreed as to that term, I find the landlord cannot prove that a pet clause was a material term.

Due to the above, I therefore find that the landlords have submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlords' 1 Month Notice to End Tenancy for Cause, dated and issued January 24, 2014, listing an effective move out date of February 28, 2014, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Landlords' application-

As I have granted the tenant's application and cancelled the Notice, I dismiss the landlords' application for an order of possession for the rental unit. As I have dismissed the landlord's application, I also dismiss their request to recover the filing fee.

Conclusion

The tenant's application is granted and the Notice is cancelled.

The landlords' application is dismissed

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 27, 2014

Residential Tenancy Branch

