



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hugh & McKinnon Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, CNC, FF

Introduction

This hearing dealt with an application by the tenants seeking to have a One Month Notice to End Tenancy for Cause set aside, an order to have the landlord comply with the Act, regulation, or tenancy agreement, an order to recover their filing fee and an order for “other”. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Are the tenants entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on or about September 1, 2013. Rent in the amount of \$1650.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$825.00.

The landlords’ agent (“the landlord”) submissions were as follows:

The landlord stated that the tenants have repeatedly breached a material term of their tenancy. The landlord stated that tenants continually parked in a visitor parking spot in contravention of the strata bylaws. The landlord stated that the strata imposed a \$250.00 fine against the subject owner due to the tenants repeatedly parking in the visitor spots. The landlord stated that several phone calls to the tenants were made as

well as an e-mail notifying them of the breach and to correct the situation immediately. The landlord stated that the tenants signed the "Form K" and were bound to follow and comply with the bylaws of the strata. The landlord stated that the tenants continued to park in the visitor spots even after the phone calls and e-mail. The landlord stated that a One Month Notice to End Tenancy for Cause was issued on March 18, 2014 with an effective date of April 30, 2014. The landlord still seeks to have the tenancy terminated.

The tenants' agent ("the tenants") submissions were as follows:

The tenants stated that they have never been provided a copy of the tenancy agreement, "Form K" or the strata bylaws despite numerous requests. The tenants stated that they had informed the landlord that their pickup truck was too large to fit in the rather small garage and that was the reason for parking in the visitor spots. The tenants stated that they have been parking off site since the e-mail of January 31, 2014 and feel the notice is unfounded. The tenants stated that many other owners parked in visitor spots as well as prohibited spots but have not been subject to a bylaw fine or other notices. The tenants stated that the property managers deal with owners in a far more positive and cooperative manner than they do with tenants. The tenants stated that the tenancy agreement does not clearly address parking and that the tenants were not given written notice to correct the issue within a reasonable time frame. The tenants stated that they want the landlords to comply with the Act, regulation or tenancy agreement and seek a \$1500.00 administrative penalty.

Analysis

Both parties were given full opportunity to give testimony, present documentary evidence, and make arguments.

Section 47 says a landlord may end a tenancy by giving notice to end the tenancy for a number of reasons. The landlord bears the burden of providing sufficient evidence to support the basis for the issuance of the Notice. The landlord issued the notice on the grounds that the tenants "Breach of a material term of the tenancy agreement was not

corrected within a reasonable time after written notice to do so". The tenants stated that parking is a not a material term and in addition, they were not provided sufficient written notice to correct the issue within a reasonable time frame. I agree with the tenants on both points. Based on the documentary evidence before me, the parking conditions are vague at best and find that it is not a material term of the tenancy. However, if I am wrong in that assertion, the tenants have satisfied me that they were not given proper notice of these alleged parking infractions. In the landlords own testimony he acknowledged that the e-mail from January 31, 2014 was the only written notice given to the tenants. That e-mail does not address the issue clearly nor does it give a timeline of action or consequences. Based on all of the above and on the balance of probabilities, I hereby set aside the One Month Notice to End Tenancy for Cause dated March 18, 2014 with an effective date of April 30, 2014. The tenancy will continue.

The tenants seek for the landlord to comply with the Act, regulations or tenancy agreement. The tenants failed to articulate and present the basis of this request. The tenants were afforded ample opportunity to do so during the hearing, but did not. Based on the insufficient evidence before me I dismiss this portion of the tenants' application.

The tenants have also filed for "other". The hearing was conducted over 50 minutes. During the last several minutes of the hearing the tenants requested that the landlord be given an administrative penalty of \$1500.00. The tenants stated that the financial hardship and highly contentious situation is the basis for that claim. The tenants did not provide any notice of this request in their application nor did they provide sufficient evidence to support it. The tenants stated that "although there is no monetary compensation requested in the application we feel it's appropriate". Based on the above I dismiss this portion of the tenants' application.

As the tenants have only been partially successful in their application I decline to award the recovery of the filing fee and they must bear that cost.

Conclusion

The One Month Notice to End Tenancy for Cause dated March 18, 2014 with an effective date of April 30, 2014 is set aside.

The remainder of the tenants' 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: May 20, 2014

Residential Tenancy Branch

