



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SEVILLE MANAGEMENT & LEASING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MT DRI MNR MNDC OLC ERP RP PSF LRE RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), for more time to make an application to cancel a 1 Month Notice, to dispute an additional rent increase, for a monetary order for the cost of emergency repairs, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make regular repairs to the unit, site or property, to provide service or facilities required by law, to suspend or set conditions on the landlord’s right to enter the rental unit, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee. I note that the filing fee was waived, however, and as a result, there is no filing fee to consider in the matter before me.

Tenant, “MP”, an advocate for tenant “MP”, and an agent for the landlord (the “agent”) attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The hearing process was explained to the parties and an opportunity to ask questions about the hearing process was provided to the parties. The evidence presented by the parties has been described below and includes only that which is relevant to the matters before me.

The tenant requested that her advocate speak on her behalf. The advocate confirmed that the tenant received the evidence from the landlord and that she had the opportunity to review the evidence prior to the hearing. The tenant’s evidence was submitted late and not in accordance with the Rules of Procedure. As a result, the tenant’s documentary evidence was excluded in full. The landlord’s evidence was submitted in accordance with the Rules of Procedure.

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 these circumstances the tenants indicated multiple matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 1 Month Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. Furthermore, the tenants applied to cancel the 1 Month Notice within the timeline defined under section 47 of the *Act*, and as a result, I dismiss the tenants' application for more time to make an application to cancel the 1 Month Notice as it is moot. I will, therefore, only consider the tenants' request to set aside the 1 Month Notice. The balance of the tenants' application is dismissed, with leave to re-apply.

Issue to be Decided

- Should the 1 Month Notice cancelled?

Background and Evidence

The parties confirmed that a month to month, periodic tenancy began approximately 40 years ago. Currently, monthly rent of \$1,023.00 per month is due on the first day of each month.

The parties agreed that the 1 Month Notice was served on the tenants on March 26, 2014. The tenants applied on the same date, March 26, 2014, to dispute the 1 Month Notice. The 1 Month Notice lists an effective vacancy date of April 30, 2014, and alleges three causes. A copy of the 1 Month Notice was submitted in evidence. The three causes listed in the 1 Month Notice are:

1. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
2. Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.
3. The tenant has caused extraordinary damage to the unit, site or property.

Regarding the first cause, the agent referred to an e-mail submitted in evidence dated March 16, 2014 from tenant "TN". In that letter, tenant "TN" makes reference to a marijuana plant growing in the bedroom closet that was over six feet tall. The letter also describes that the top of the closet had a massive hole in it, however, at the end of the

e-mail the tenant writes that the hole is filled and painted over, that staples have been removed, filled in and painted over. The landlord did not submit any photographic evidence in support of the 1 Month Notice.

The agent stated that sometime in March, about a week before serving the 1 Month Notice, he inspected the rental unit and witnessed black mold in the rental unit. The agent stated that after he received the e-mail from tenant "TN" he realized that the growing of marijuana was the cause of the black mold. The agent stated that he did not take any photographs of the black mold or other damage.

The agent confirmed that he received photographs from the tenants of their repairs to the rental unit, and that the "photos looked good" and that the tenants "did a very good job" with the repairs. The agent stated that he did not know if there was other damage to the rental unit, however, as he has not inspected the rental unit since serving the 1 Month Notice as he "wanted to wait for the results of this hearing."

The advocate denied that the rental unit is damaged currently, and stated that since being issued with the 1 Month Notice, the rental unit has been repaired and that the agent confirmed the resulting work was "good".

The agent confirmed that he did not have any evidence from the police to support that the police were contacted and confirmed illegal activity in the rental unit. The agent had no further evidence to present to support the 1 Month Notice.

Analysis

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

The 1 Month Notice dated March 26, 2014 has an effective vacancy date of April 30, 2014. The tenants disputed the 1 Month Notice on March 26, 2014, which is within the ten day timeline provided for under section 47 of the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. Regarding the first cause, the agent testified that he witnessed black mold in the rental unit sometime in March 2014, and relied on the e-mail from tenant "TN" as proof of a marijuana grow operation in the rental unit, but could not provide a specific date that he inspected the rental unit.

The agent testified that he was satisfied that the tenants repaired the damage as they did a “very good job”, based on the photographs provided by the tenants to the agent. The agent stated that he did not know if there was other damage to the rental unit, however, as he has not inspected the rental unit since serving the 1 Month Notice as he “wanted to wait for the results of this hearing.” Based on the above, I find the landlord has failed to meet the burden of proof to prove the first cause listed on the 1 Month Notice, due to insufficient evidence. Although there may have been damage in the rental unit, both parties agreed that repairs have been made to the rental unit, and the agent testified that the tenants did a “very good job” with the repairs. I find that the landlord has provided insufficient evidence to support that currently there is damage in the rental unit.

I find that the landlord has also failed to meet the burden of proof to prove the second and third causes listed on the 1 Month Notice, due to insufficient evidence.

As the landlord has failed to prove all three grounds listed on the 1 Month Notice, I **cancel** the 1 Month Notice dated March 26, 2014. Given the above, the 1 Month Notice dated March 26, 2014 is of no force or effect.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The 1 Month Notice issued by the landlord dated March 26, 2014 has been cancelled.

The tenancy has been ordered to continue until ended in accordance with the *Act*.

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: May 13, 2014

Residential Tenancy Branch

