



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 558696 Alberta Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant's application (filed April 14, 2014): MT; CNC; OLC; LRE; MNSD; FF

Landlords' application (filed April 17, 2014): OPC; OPB; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks more time to file an application to cancel a One Month Notice to End Tenancy for Cause (the "Notice"); to cancel the Notice; for Orders that the Landlords comply with the Act, regulation or tenancy agreement and suspending or setting conditions on the Landlords' right to enter the rental unit; for return of the security deposit; and to recover the cost of the filing fee from the Landlords.

The Landlords seek an Order of Possession; and to recover the cost of the filing fee from the Tenant.

Both parties gave affirmed testimony at the Hearing.

It was determined that each party served the other with their Notice of Hearing documents and copies of their documentary and digital evidence by registered mail. The Tenant acknowledged that she was able to open the Landlord's digital evidence.

Preliminary Matters

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that the Tenant's requests for Orders and for return of the security deposit are not sufficiently related to the main issue, which is to cancel the Notice. For these reasons, I dismiss those portions of the Tenant's application **with leave to reapply**.

Should the Tenant be allowed more time to file an application to cancel the Notice?

The Landlord MZ testified that her agent HS served the Tenant SH with the Notice on March 21, 2014, by handing it to SH. SH stated that the HS had given her an envelope

on March 21, 2014. SH stated that she did not realize the Notice was in the envelope until April 11, 2014.

SH testified that she received a Notice of Entry on April 11, 2014, for the purposes of showing the rental unit to a prospective tenant. SH asked what it was all about and was told that she was served with an eviction notice on March 21, 2014. It was then that she opened the envelope and first became aware of the Notice to End Tenancy. MZ testified that she did not know if HS specifically told SH on March 21, 2014, that she was being served with an eviction notice.

I accept SH's testimony that did not see the Notice until April 11, 2014. Therefore, I find that she received the Notice on April 11, 2014. The Act allows a tenant 10 days after receipt of a notice to end tenancy for cause to file an application to cancel the notice. In this case, SH filed her application on April 14, 2014, which is within the time limit allowed under the Act. Therefore, I find that SH's application for more time is moot and need not be considered.

Issues to be Decided

1. Is the Notice a valid notice to end the tenancy?

Background and Evidence

This tenancy began in the summer of 2012, and a new tenancy agreement was signed on March 1, 2014. Monthly rent is \$1,175.00 due on the first day of each month. SH paid a security deposit in the amount of \$587.50 on July 18, 2012.

The rental unit is a house with two suites. SH and her son occupy the main part of the house, which has three bedrooms. The second suite is a one bedroom furnished suite on the main floor, which is occasionally occupied by MZ or her guests. The two suites share a common laundry area.

The parties gave a lot of oral testimony; however, I have included only the testimony that is relevant to the findings in this Decision.

MZ alleged that SH is running a business in the rental unit, contrary to clause 14 of the tenancy agreement. She also submitted that SH is in violation of clause 13 of the tenancy agreement because she is alleged to have had a home-stay student on a couple of occasions. MZ submitted that clauses 13 and 14 are material terms of the tenancy agreement. MZ issued a caution notice to SH on March 20, 2014. The Notice to End Tenancy was issued on March 21, 2014.

SH testified that she teaches art at a community centre. She stated that she had an “art camp” for young children at the rental unit over spring break in March, 2014, because the community centre had canceled her art camp at the last minute. She stated that she has three bedrooms, one of which is not used, and she saw no harm in having a home stay for 3 or 4 weeks at a time.

Analysis

In this situation, the onus is on the Landlords to provide sufficient evidence that the tenancy should end for the reasons provided on the notice to end tenancy.

The Notice provides the following reasons for ending the tenancy:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In order to support this reason to end the tenancy, the Landlords must provide sufficient evidence that the Tenant:

1. breached a material term of the tenancy agreement; **and**
2. that the breach was not corrected **within a reasonable time after written notice** to do so.

[my emphasis added]

The Caution Notice was issued on March 20, 2014. The Notice to End Tenancy was issued on March 21, 2014. I find that the Landlords did not give the Tenant a reasonable time to correct any alleged breach before issuing the Notice. For this reason, I find that the Landlords have not provided sufficient evidence that the tenancy should end for the reason provided on the Notice. I make no finding with respect to whether or not the Tenant breached a material term of the tenancy agreement.

I find that the Notice is not an effective notice to end the tenancy and therefore the Tenant’s application to cancel it is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant’s Application had merit and therefore I find that she is entitled to recover the cost of the filing fee from the Landlords. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$50.00 from future rent due to the Landlords.

Conclusion

The Tenant’s application to cancel the Notice to End Tenancy issued March 21, 2014, is **granted**. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The remainder of the Tenant's application is **dismissed with leave to reapply**.

The Landlords' application is **dismissed**.

The Tenant may deduct **\$50.00** from future rent due to the Landlords in recovery of the cost of the filing fee.

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: June 12, 2014

Residential Tenancy Branch

