



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 16, 2014, by the Tenants to cancel a Notice to end tenancy issued for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice issued on April 8, 2014 for cause, be upheld or cancelled?

Background and Evidence

It was undisputed that the parties entered into a written tenancy agreement on January 19, 2012, for a month to month tenancy, after the building was sold to the current Landlords. The Landlords purchased the property on January 15, 2012 and the Tenants have occupied the rental unit since before February 2006. Rent was payable on the first of each month in the amount of \$525.00 at the time the parties signed the January 19, 2012 tenancy agreement. Rent has subsequently been increased to \$600.00 per month.

The Tenants paid a security deposit of \$256.05 at the onset of their tenancy sometime on or before February 2006.

The Landlords submitted that on April 8, 2014, they personally served the Tenants with a 1 Month Notice to end tenancy for cause. The Notice was issued pursuant to Section 47 of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park

The Landlords submitted seventeen pages of evidence in support of issuing the Notice which consisted of the following:

- A complaint from unit # 120 dated April 8, 2014
- A complaint from unit # 118 dated May 21, 2014
- 3 faxed photos which were illegible with descriptions
- 3 warning letters written to the Tenants dated March 27, 2012, November 26, 2012, March 4, 2014, and March 28, 2014
- 7 plumbing invoices dated between April 1, 2012 and January 9, 2014.

The Landlords testified that they issued the 1 Month Notice because they were told that the Tenant, J.M., admitted to his neighbor in unit # 120 that he removed the cap from the sewage line back in January 2014. The Landlords stated that they have had issues in the past with the cap being removed and debris, such as bike parts and cans, being thrown inside the pipe. They had originally thought it was kids who were removing the pipe cap but when they found out it was the Tenant they issued the eviction Notice. The Landlords argued that this problem has cost them a significant amount of money in plumbing costs so they began to purchase the replacement caps and cleaned out the pipe each time the cover was removed, instead of hiring a plumber to do the work. They indicated that when the cap is removed raw sewage comes out and poses a health hazard to neighbouring children and tenants.

The Landlords stated that there were other reasons for issuing the Notice which involved the Tenant smoking marihuana inside and outside of the rental unit. They argued that the tenants of unit #119 have been complaining of marihuana smoke coming into their baby's bedroom since moving into the unit in November 15, 2013. They have spoken to the Tenants about the marihuana smoke and issued them two warning letters in March 2014, as provided in their evidence. The Tenant(s) started

smoking the marihuana outside with their friends which lead to noise complaints. The tenants of #119 provided a written complaint dated May 21, 2014 and have since given the Landlords their notice to move.

The Landlords submitted that once they served the Tenants with the eviction Notice, the tenants in unit # 120 found that their front door and their van had been spit at numerous times.

Upon review of the complaint letters provided by the Landlords the Landlords confirmed that they requested the complaint letters be written so they could use them as evidence. They stated that they had initially received the complaints verbally and did receive a prior e-mail complaint but did not think to include it in their evidence.

The Tenants testified that they did not remove the sewer line cap but they have replaced it when they noticed it was off. They pointed to a letter provided in their evidence which indicates that a former tenant had borrowed someone's tool so that he could remove the sewer cap.

The Tenants stated that they initially thought the Landlords were trying to evict them so they could raise their rent with new tenants.

The male Tenant provided contradictory testimony with regards to the smoking of marihuana. First he confirmed he smoked marihuana but did not smoke it inside the rental unit. Then he denied smoking marihuana inside or outside at the rental property and denied smoking it at all. Lastly he confirmed they used to smoke marihuana at the rental unit but no longer do so, as he goes to a property a few blocks away where they smoke marihuana. He argued that there are several other tenants who smoke marihuana on the rental property and the smell could be coming from one of them.

The Tenants denied spitting on the neighbours' door or their van. They said they have tried to be nice to the neighbours and would not do something as despicable as spitting.

The Tenants argued that they had complained to the Landlord about the roofers not being safe the day before they were issued the eviction Notice. They stated that an empty roof tile box had fallen off the roof and barely missed their young son. Then a few nails fell off the roof. They had tried to complain to the Landlord, J. H., about the roofers not being careful but she simply "gave them attitude". They were served the eviction Notice the next day.

In closing, the Landlords stated that when they attended the rental unit to serve the Notice a cloud of marihuana smoke came out when the Tenant opened the door. The Tenant told them that he had just sprayed cologne, to which they responded saying they knew what marihuana smoke smelled like. Just as the hearing was ending the Landlords requested an Order of Possession be granted if the Notice was upheld.

The Tenants stated that they understood that they were not to touch the sewage line cap and were not to smoke marihuana anywhere on the rental property.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenants in a manner that complies with section 89 of the Act.

When considering a 1 Month Notice to End Tenancy for Cause the Landlords have the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

The Landlord has issued the 1 Month Notice based on allegations of marihuana smoking and removal of the sewage line cap. The Notice indicates the following two reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park

Upon review of all the evidence before me I find the Landlords submitted insufficient evidence to prove J.M. was responsible for removing the sewage line cap. I make this finding in part because the neighbors' complaint letters were not created until after the Notice was issued. Furthermore, the Landlords' evidence indicated that they initially thought it was children who were removing the caps, until they were provided with hearsay evidence from a neighbour. I do not find it a coincidence that the hearsay evidence came from the neighbour who had previously complained about the Tenants. Also, the Tenants provided different hearsay evidence that indicated a former tenant is the one responsible for removing the sewage caps. Accordingly, I find the Notice must fail on this issue.

Residential Tenancy Branch guidelines suggest that the smoking of marijuana should not be grounds for ending a tenancy unless it has been established that smoking marijuana

has had a significant impact on other occupants in the residential complex or on the landlord's property. I find this guideline to be reasonable.

The Landlords submitted evidence that they served the Tenants two warning letters. The first warning dated March 4, 2014 states "You need to stop smoking pot indoors". The second warning dated March 28, 2014 states "This will be your last warning. If you continue to smoke pot indoors you will be evicted".

Notwithstanding the Landlords' testimony that they could smell marihuana when they attended the unit to serve the Notice, I find that at the time they issued the Notice and served it, they did not have evidence that the Tenants were smoking marihuana inside the unit again. In addition, there is evidence that the Tenant J.M. and the Landlord J. H. had a contentious conversation the day before the issuance of the Notice, regarding the Tenants' complaints of a box and nails falling from the roof and allegations that the roofing contractors were not being safe. Therefore, I find that the Landlords do not have grounds to end this tenancy at this time.

The Tenants have testified that they understand they are not to tamper with or touch the sewage line cap and are not to smoke marihuana anywhere on the rental property. Accordingly, if the presence of marihuana smoking or tampering with the sewage line cap is verified by the Landlords in the future, the record of these events would form part of the Landlords' case should it again come before an Arbitrator for consideration.

Conclusion

I hereby set aside the One Month Notice to End Tenancy, issued April 8, 2014; and I order that this tenancy continue until it is ended in accordance with the *Act*.

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 11, 2014

Residential Tenancy Branch

