



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenants applied to cancel a 1 month Notice to end tenancy for cause issued on June 6, 2014 and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord and tenant confirmed receipt of each others' evidence submissions.

The parties confirmed that on June 6, 2014 the landlord issued and served 2 separate 1 month Notices to end tenancy for cause, to the tenant. The landlord and tenant agreed that 1 Notice showing an issue date of July 6, 2014 should be withdrawn. The parties agreed that the Notice issued on June 6, 2014 was in dispute.

At the start of the hearing I established that the 2nd applicant, K.S., is an individual who moved into the home after the co-tenant named on the tenancy agreement vacated. The landlord agreed that the co-tenant, Z.C. is no longer a tenant. The landlord confirmed that K.S. has never paid rent to him.

Residential Tenancy Branch policy defines an occupant as:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Therefore, I determined that K.S. is not a tenant, but an occupant who has no rights or obligations under the Act.

Issue(s) to be Decided

Should the 1 month Notice to end tenancy for cause issued on June 6, 2014 be cancelled?

Background and Evidence

The tenancy commenced on September 1, 2011. The rental unit is the rear unit in a front-back duplex. The tenant's grandparents had rented the home since the early 1980's. When the grandparents passed away agreement was made to rent the unit to the grandson.

The landlord confirmed that when the previous tenancy ended the home was not cleaned out; that no move-in condition inspection report was completed and, it appears, that no inspection to assess the need for required repairs was completed. As a result there is no clear evidence as to what was left on the property after the previous tenancy and of the state of the home at the start of the current tenancy. There was agreement that earlier this year the landlord rented a garbage dumpster so the tenant could dispose of garbage.

There was agreement that effective February 1, 2014 the landlord entered into a tenancy with individuals who reside in a unit below the tenant's unit. Originally those individuals had been living in that unit and paying part of the tenant's rent.

Copies of the 2 tenancy agreements were supplied as evidence.

The tenancy in dispute indicates rent owed in the sum of \$1,026.00; which was increased to \$1,049.00. Rent is due on the 1st day of each month. The parties agreed that the tenant now owes \$524.50 each month as rent is essentially split between the upper and lower units. The standard Residential Tenancy Branch tenancy agreement includes an addendum that requires the tenant to maintain the yard in an orderly manner and that no accumulation of rubbish will be permitted, the tenant must pay utility bills and that pets are not allowed unless the landlord gives permission. The landlord said the tenant was expected to clean the property up and make repairs.

The hydro account is in the tenant's name. He gives a copy of the bill to the occupants of the lower unit, who then pay their share of the bill to the tenant. This arrangement generally works well for the parties. The parties were informed that utility payments made by this method could be found to be unconscionable and that any future issues with payment to the tenant could result in the need for placing the account in the landlord's name.

The landlord and the tenant agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on July 6, 2014.

The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- put the landlord's property at significant risk;
- that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord; and

- that the tenant has assigned or sublet the rental unit without written consent.

The landlord said that the tenant has not engaged in any illegal activity.

The issues related to subletting the unit were resolved in February 2014 when the landlord signed a tenancy agreement with the occupants of the lower unit. Even though there had previously been concern with the occupants living in the lower unit of the tenant's duplex unit, as a sublet made by the tenant.

The landlord stated that on June 4, 2014 he received a telephone call from a male who identified himself as one of his tenants. The parties agreed that this individual is the female occupant's boyfriend; J. The landlord said that the caller insulted him and was threatening. A tenant in the front duplex unit provided a signed statement that he heard this individual outside of his home; that J. was swearing "at the top of his voice." The witness opened his door and told J. to leave the property. J. said he was talking to his landlord. The witness told J. that he could not use that kind of language on the property.

The landlord said this call caused him stress and that it was threatening in nature. Upon the advice of the police the landlord issued the Notice ending tenancy. The landlord believes J. is unstable.

The tenant said that J. is the boyfriend of occupant K.S. and that he does occasionally "fly off the handle." The tenant did not know that J. had called the landlord until he saw the landlord's evidence.

There was no dispute that the tenancy agreement addendum prohibits the tenant from having pets unless the landlord has given permission. There was also no dispute that several cats are in the home. The landlord said that this poses a risk to the home and that there have been reports of the cats urinating on the floors, in the absence of litter boxes.

The tenants said he now understands that he must find homes for the cats and remove them from the rental unit. He had not been given any warning to remove the cats.

The landlord said that significant risk exists as the tenant has not cleaned up trash around the home. The landlord recently gave notice for entry and found the home strewn with items and in a state the landlord considers breaches health and safety standards. Photographs of the rental unit supplied as evidence showed several missing electrical face plates; a ceiling that has cracked paint; a smoke detector missing the battery; a window sill that has all paint peeled off; belongings throughout the home; and some items in the back yard. Due to the state of some belongings the landlord purchased a mattress set for the tenant.

The parties agreed that the landlord issued notice of entry for June 20, 2014 but he was denied entry into the occupant's bedroom. The tenant said the occupant was ill on that day in her room sleeping. The landlord believes that the tenants did not want him to see that room.

The parties discussed a dryer the tenant has installed. The occupants of the front unit have complained as the dryer makes a lot of noise. The landlord is an electrician and has determined that the dryer is not safely installed. The tenancy agreement does not include supply of laundry. The tenant said there is no evidence the dryer is not installed properly. The landlord stated that he is licenced to make determinations on proper installation and that the dryer is not safe.

The tenant supplied photographs taken of the unit during the time his grandparents had been tenants. The photos show items that remain in the backyard to this day. A photo of the bathroom shows grouting that appears to have been in place for many years. Photos show the window sills and what appears to be the growth of some sort of mold and deterioration of a window sill, at the time when the tenant was a young boy.

The tenant submits that he has replaced the light switch plates and that the kitchen cupboard doors had been removed for painting. The items throughout the home are not rubbish, but personal property.

The tenant said that some refuse outside of his unit belongs to the occupants of the lower unit.

The landlord confirmed that the tenant has not been given any written warnings regarding concerns that the landlord has in relation to the reasons indicated on the Notice ending tenancy.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reasons given on the Notice issued June 6, 2014.

I have considered the telephone call made by J. to the landlord on June 4, 2014. *Black's Law Dictionary, sixth edition*, defines disturbance, in part, as:

"Any act causing annoyance, disquiet, agitation, or derangement to another, or interrupting his peace..."

Further, unreasonable is defined, in part, as:

"Irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid."

There is no doubt that the telephone call disturbed the landlord and that it caused the landlord to contact the police. However, I find that a single telephone call that involved swearing by the caller does not meet the standard that would support ending the tenancy. Further, it appears that the tenant had no knowledge of this call made from the driveway of the rental unit. The tenant was not in a position to anticipate this call would be made and he was unable to intervene.

The tenant is now aware that the actions of any person that he allows on to the property may affect the tenancy and could result in a possible end to the tenancy. This one-time event cannot be repeated or the landlord may well be in a position to prove a significant interference or unreasonable disturbance has occurred; given that a pattern of behaviour could be argued.

I find, from the evidence before me that the previous tenancy was not ended properly in that the rental unit was not cleared of all belongings to allow for a proper assessment of the unit. The landlord was attempting to accommodate the grandson of the previous tenants but in doing so confusion has now been created in relation to refuse outside of the home and the need for repairs. The landlord may well wish to work with all occupants of the rental property to remove all items not owned by those occupants. The landlord has made some efforts with the tenant at

the hearing; but it appears that some items left on the property pre-date this tenancy and that the tenant did not assume ownership of those items.

In relation to the belongings in the home, there was no evidence before me that any health or safety risk exists. The tenant may not keep a home to the same standard that the landlord would expect, but in the absence of any Order from local government determining a risk exists, I find that cause to end the tenancy for this reason is not supported.

Residential Tenancy Branch policy suggests that the landlord is responsible for ensuring that a rental unit meets "health, safety and housing standards" established by law, and that the unit is reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards." The party making a claim must prove on the balance of probabilities that the standards have not been met.

In relation to smoke detectors policy suggests that the landlord must maintain the detectors in working order. I find this takes a reasonable stance. A tenant may not interfere with the detectors, such as removing batteries. To do so could form cause to end the tenancy. The parties have agreed the detectors are now functioning. If the detectors become inoperable the tenant should immediately notify the landlord so that he can ensure they are in working order.

In relation to the dryer, if the landlord, who is an electrician, determines the dryer is unsafe the tenant must heed the advice to disconnect the dryer. The tenant is now aware that the sound made by the dryer is disturbing occupants of the front unit and should take steps to repair the dryer. It is safe to say that a functioning dryer should not make any significant sound.

The tenant had not been given any written notice in relation to the 2 cats he has in the home; in breach of the tenancy agreement. The tenant has now agreed he will remove the cats and find homes for them. The tenant was told that he must immediately locate a foster home for the cats, so that he is no longer in breach of the terms of the tenancy.

From the evidence before me it appears that the rental unit is in need of some basic maintenance such as new grouting in the bathroom and painting of window sills and ceilings. The landlord has the right to enter the home, with proper notice given in accordance with section 29 of the Act, so that the need for maintenance can be established. The tenant may not deny the landlord access to any portion of the home and is warned that to do so interferes with the landlord's lawful right.

As discussed during the hearing when either party has any concerns in relation to the tenancy, written notice to the other party is advised. This provides clarity and creates a record of the communication. Copies of all communication can be retained for future reference. For example, if a tenant or his guests are causing a disturbance, written notice and warning would be expected, so that the behaviour can be altered. If written warnings are not followed by a change in behaviour then grounds to end the tenancy may well be established.

Therefore, I find that the a month Notice ending tenancy for cause issued on June 4, 2014 is of no force and effect. This tenancy will continue until it is ended in accordance with the Act.

As the application has merit I find that the tenant may deduct the \$50.00 filing fee from the next month's rent owed.

Conclusion

The Notice ending tenancy is cancelled.

The tenant may deduct the \$50.00 filing fee from the next month's rent owed.

This decision is final and binding 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: July 25, 2014

Residential Tenancy Branch

