



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY M C
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *OPC, CNC, FF*

Introduction

This hearing dealt with applications by the landlord and the tenants, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and the tenant applied for an order to cancel the notice to end tenancy for cause. Both parties applied for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside?

Background and Evidence

The tenancy started about 15 years ago. On June 16, 2014, the landlord served the tenants with a notice to end tenancy for cause. The reasons for the notice were that the tenant has seriously jeopardized the health and safety and lawful right or interest of another occupant or the landlord and has put the landlord's property at significant risk.

The landlord stated that on the afternoon of June 14, a complaint was received from the occupant of the unit located below the tenant's unit. The complaint was to do with a water leak. The care taker visited the tenant's unit as per the landlord's policy to inspect the cause of the leak.

The caretaker knocked on the tenant's door. The tenant stated that he was in the process of carrying out a medical procedure at that time and was unable to attend to the door. When the knocking persisted, the tenant stopped his procedure, went to the door and denied entry to the care taker.

The landlord stated that the leak started to subside but suddenly got worse on the morning of June 16, 2014. At that time the caretaker along with a plumber knocked on the tenant's door. The tenant stated that he was asleep and did not hear the knocking but was woken up to voices inside the apartment. The tenant asked the caretaker and plumber to leave the apartment and did not permit an inspection, to determine the cause of the leak. Later that day, the landlord served the tenant with a 24 hour notice to enter the unit. The landlord stated that shortly after the problem was resolved and the visit was not necessary.

The landlord stated that fortunately in this case, the leak did not cause a great deal of damage that a leak has the potential to do. The tenant stated that he understood that the landlord has the right to enter without notice in the case of an emergency and agreed to cooperate in the future.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant has seriously jeopardized the health and safety and lawful right or interest of another occupant or the landlord and has put the landlord's property at significant risk.

Based on the evidence before me and the sworn testimony of the parties, I find that the tenant did deny the landlord access to inspect the unit in an emergency situation. However I further find that after the first denial of entry, the landlord could have provided the tenant with a notice to enter. The landlord chose to enter two days later without notice, to carry out an inspection for the same problem.

Even though the situation had the potential to cause damage to the landlord's property, I find that this is a onetime incident in a tenancy of 15 plus years. The tenant is now aware that the landlord may enter the rental unit without notice in an emergency when the entry is necessary to protect the property.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated June 16, 2014. As a result, the tenancy shall continue in accordance with its original terms.

I find it timely to put the tenant on notice that, if these alleged behaviours were to occur in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Since the landlord has not proven his case, he must bear the cost of filing his application. The notice is set aside and therefore the tenant is entitled to the recovery of the filing fee. The tenants may make a onetime deduction of \$50.00 from a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: September 24, 2014

Residential Tenancy Branch

