



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on July 31, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated July 31, 2014?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The written tenancy agreement provided that the tenancy would begin on February 1, 2000. The present rent is \$1300 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$435 at the start of the tenancy.

The tenant testified the rental unit contains 2 bedrooms. Presently there are three people living in the rental unit. The tenants' daughter recently moved out.

The landlord seeks to end the tenancy on the basis that there is an excessive amount of personal belongings in the rental unit which creates health and fire hazard. The landlord produced photographs showing a considerable amount of clutter. She testified that while this is not a hoarding situation the amount of belongings makes it appear like a storage facility. She further testified that this could create a fire hazard and could cause mould. There is plastic on the window which creates an undue amount of humidity in the rental unit. The landlord testified that the excessive amount of personal belongings makes it impossible to properly clean the rental unit and has caused a mice problem. The landlord produced a Notice dated February 17, 2014 and May 8, 2014 stating that the tenants have failed to maintain ordinary health, cleanliness and sanitary standard throughout the residential tenancy premises, the condition is unacceptable and needs to be remedied immediately. The landlord further testified that a neighbor has complained to them of the tenants doing cooking actions such as chopping etc. in the early hours of the morning.

The tenants dispute the landlord's allegations. They submit there is insufficient evidence that the situation amounts to a fire hazard. They also testified they have plastic on the window because they value their privacy. They are not doing anything illegal and this is not a hoarding situation. They submit there is no evidence the rental unit has mould in it or that it is a health hazard. They dispute the evidence of the neighbor stating they have worked out the problem with the neighbor. The tenant's deny they have caused a mice problem. They further testified that they are willing to remove some of their belongings. However, the landlord has a padlock on the door to

the storage facility and it can be accessed only during limited times when the maintenance person is in the building.

Tenant's Application:

The Notice to End Tenancy relies on section 47(1)(h) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Section 32(2) to (4) of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Analysis

The landlord has the burden of proof to establish sufficient cause to end the tenancy based on the evidence presented at the hearing. After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause. The photographs indicate there is an excessive amount of personal belongings in the rental unit. However, the landlord has failed to present sufficient evidence to establish this amounts to a fire hazard or that that it amount to a breach of the obligation under

section 32(2) of the Residential Tenancy Act. The landlord acknowledged this is not a hoarding situation. The presence of an excessive amount of belongings does not necessarily mean there is a lack of cleanliness or sanitary standards in the rental unit. The landlord alleged there was mould and she became ill while inspecting the rental unit but the landlord failed to present medical evidence to support this allegation. The tenant testified he is healthy and has suffered no ill effects. The landlord failed to present evidence from the neighbor about disturbances early in the morning.

Determination and Orders

As a result I determined the landlord failed to establish sufficient cause to end the tenancy. I ordered the one month Notice to End Tenancy dated July 31, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I further ordered that the landlord pay to the tenants the sum of \$50 for the cost of the filing fee such sum may be deducted from future rent

Landlord's Application:

I dismissed the landlord's application for an Order for Possession and the cost of the filing fee as the tenant's application to cancel the one month Notice to End Tenancy dated July 31, 2014 was successful.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1 of the Residential Tenancy Act.

Dated: October 02, 2014

Residential Tenancy Branch

