



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, 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 sufficiently served on the tenant on November 7, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the Landlord. 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 Notice to End Tenancy dated November 7, 2014?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on January 1, 2012. The present rent is \$692. The tenant paid a security deposit of \$325 at the start of the tenancy. The tenancy was original a fixed term tenancy that provided the tenant would have to leave at the end of the fixed term. There is a dispute between the parties as to whether it has become a month to month tenancy or continues to be a fixed term tenancy.

A number of disputes have arisen between the parties including whether this is a month to month tenancy or fixed term tenancy and whether the landlord has a right to increase the rent. An arbitrator only has the jurisdiction to consider the issues put before him/her in the Application for Dispute Resolution. The only issue before me as set out in the Application for Dispute Resolution is whether the landlord has sufficient ground to end the tenancy based on the Notice to End Tenancy dated November 7, 2014 and the tenant's claim to recover the cost of the filing fee.

Grounds for Termination

The Notice to End Tenancy dated November 7, 2014 relies on section 47(1)(d) and (g) of the Residential Tenancy Act which provide 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:

...

(d) the tenant or a person permitted on the residential property by the tenant has
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;
;

Analysis

The landlord has the burden of proof to establish sufficient cause based on a balance of probabilities. The landlord testified the tenant is in conflict with other residents on the rental property. The other residents failed to testify at the hearing and failed to provide sufficient evidence to prove this allegation. A dispute has arisen between the tenant and others over the failure of the other residents to lock the gate between their properties. The tenant testified that as a result deer gained access to his property and they damaged his trees. As a result he found it necessary to place a lock on the gate. The other resident (the landlord's handyman) had to go to the bottom of the driveway to gain access to the rental property. I determined this does not amount to a significant interference or unreasonable disturbance. The tenant unlocked the gate

on request. The other party has an obligation to be sensitive to the tenant's concerns about damage to his trees..

The landlord testified the tenant left the rental property in an untidy condition. He also testified about the presence of rats caused by the tenant's failure to ensure his yard is properly care for. The property is a farm property. The landlord failed to prove the presence of rats was caused by the tenant. Further, he failed to prove that there is a substantial rat problem. The landlord also failed to prove that there is a significant risk of fire caused by the manner in which the tenant left the property.

Determination and Orders

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated November 7, 2014 be cancelled. The tenancy shall continue. As the tenant has been successful I ordered that the landlord pay to the tenant the sum of \$50 for the cost of the filing fee such sum may be deducted from future rent.

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: November 28, 2014

Residential Tenancy Branch

