



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OLC, LRE, LAT, FF

Introduction

This hearing was convened by way of conference call concerning the amended application made by the tenants for an order cancelling a notice to end tenancy for cause; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an order authorizing the tenants to change the locks to the rental unit; and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The tenants also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the landlord. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that a 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and more particularly with respect to the reasons for issuing it?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to ensuring the rental unit has heat?
- Have the tenants established that the landlord's right to enter the rental unit should be suspended or that conditions on the landlord's right should be imposed?
- Have the tenants established that the tenants should be permitted to change the locks to the rental unit?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 15, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$900.00 per month is payable in advance on the 15th day of each month and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$400.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a basement suite in a house and the landlord occupies the upper unit.

The landlord further testified that the tenants failed to pay rent in full for the month of August, 2014 having only paid \$500.00 and promised to move out. The tenants rented a truck and moved out and the landlord had another tenant to move in but the tenants moved back in.

The landlord also testified that a door is broken and there is grease all over the walls. The tenants have left hot water running for days. When the landlord asked why, the tenant said it was broken. The landlord asked why they didn't tell him the tenant said it had just happened but the landlord's residence ran out of hot water. The landlord got it fixed, but they never mentioned anything to him and the hydro bills would be very high. The landlord thought the tenants would be moving in August, so he was patient.

The landlord also testified that the tenants have a daycare in the rental unit. The landlord talked to them about getting insurance, and is concerned for the safety of the landlord's home and the children. A month after the tenants moved in they started making money and has told the landlord that business has picked up. The landlord called the place where they got the license for the daycare and was told that the tenants have to have insurance. Sometimes they leave the door open and the children are on the street, and the daycare has too many kids to handle.

The landlord also testified that there is a lot of noise from the rental unit and the landlord can't sleep. The alarm keeps going off when the tenants cook and the landlord asked them to not cook after midnight but they continue to do so.

The landlord served the tenants by personally serving one of the tenants on November 19, 2014 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the notice has been provided and it is dated November 19, 2014 and contains an expected date of vacancy of November 29, 2014 for \$400.00 in unpaid rent that was due on November 1, 2014, and the landlord testified that he made a mistake and the notice should say that the rent was due on November 15, 2014, however the tenants paid the outstanding rent on November 24, 2014,

The landlord also served a 1 Month Notice to End Tenancy for Cause personally to the tenant on November 19, 2014 because the tenants were repeatedly late paying rent by failing to pay the \$400.00. A copy of that notice has been provided and it is dated

November 19, 2014 and contains an expected date of vacancy of December 15, 2014. The reasons for issuing the notice are:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;;
- Tenant has caused extraordinary damage to the unit/site or property/park.

The first tenant testified that the landlord agreed to allow a daycare so the tenant got her license and the parties signed the tenancy agreement. The tenant sent it to the City and the daycare license place. Then the landlord said the daycare couldn't continue unless the tenant shared the proceeds with the landlord equally. The tenant disagreed and then the landlord said he didn't want the daycare in the house. The tenant asked the landlord to allow some time to get a licensed home. The process to get the license took about 3 months.

The tenant further testified that the landlord started insulting the tenants in front of the children. The tenants found another house in April and submitted an application to the City in June and the tenants were supposed to move in August, but it couldn't be approved. The tenant talked to the landlord to try to settle the dispute and the landlord agreed to withdraw the 10 day notice if the tenants paid the rent, so they did.

The tenant also testified that the daycare has lost 2 clients at a loss of \$1,000.00 per month. A social worker brought children to the rental unit because their smother was in the hospital. The landlord told the social worker that the kids couldn't stay and was very aggressive. Then the social worker wouldn't leave the kids. The tenant talked to the landlord asking him to call the social worker but he refused and now the tenants can't get the clients back. The house is licensed and it's a legal business. Prior to obtaining the license, the tenants could only have 2 kids without a license, and the license was obtained in June, 2014.

The tenants want to stay in the rental unit until the school year is finished for their daughter, and want peace for the daycare clients. The landlord took down and threw out a sign for the daycare saying that he didn't want any business, but that's what pays the rent.

The second tenant testified that the landlord had agreed that the tenants keep the \$400.00 from August's rent, being the amount of the security deposit, to use for a new house to rent, and when the tenants couldn't move, the landlord never asked for the \$400.00, he just kept trying to push the tenants out.

The tenant also testified that the landlord puts the heat off and on whenever he wants. The tenants have children and it's cold. He stated that if the heat is off in the landlord's unit the thermostat in the rental unit doesn't work.

From the beginning of the tenancy, the landlord has a closet in the rental unit for his own use and the tenants told him that they needed their privacy. The landlord said that the tenant should install a lock and the landlord would pay for it, but the landlord removed the lock and twice the tenants have noticed someone has been in the rental unit.

The landlord is always accusing the tenants and calls the tenant's wife a bitch. He also shouts in front of the children and took photographs and went into the bedrooms. The tenant told the landlord to leave but he wouldn't until the tenant called the police.

With respect to the dripping water, the tenant noticed it for 2 days, but on the 3rd day the drip got more severe. The landlord fixed it and said it was happening in his unit as well, and then the tenants had no hot water, but now do.

The tenant also denies that there is any damage to the door.

Analysis

Where a tenant disputes a notice to end tenancy given by the landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the 1 Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. With respect to the reasons for issuing it, firstly I am not satisfied that the landlord has established that the tenants have been repeatedly late paying rent. The landlord was owed \$400.00 for the month of August, 2014. The tenant testified that the landlord told the tenants to keep it to assist with obtaining another rental unit, but that didn't work out for them, and the landlord never asked for it. The landlord has not disputed that testimony, and I find that it was the returned security deposit. Further, there is no evidence that the tenants were late with the rent on any other occasion. In order to end a tenancy for repeated late rent, the landlord must be able to establish that the tenants were late on 3 occasions, not on one occasion that lasted for 3 months, especially if the landlord authorized it and then did nothing to collect it.

The landlord also claims that the tenants have put the landlord's property at significant risk by not having insurance. I don't know what additional insurance the landlord wants the tenants to have, however, there is nothing before me to indicate what is required by the City by-laws or the daycare licensing. The landlord stated that he called the licensing department and they said insurance was necessary, but has provided no evidence to satisfy me that it is a requirement.

With respect to the landlord's claim that the tenants have caused extraordinary damage to the rental unit, I have no evidence of that either. The tenant denies that the door is damaged, and if the walls are greasy, the onus will be on the tenants to clean them before vacating the rental unit. Even if the door is damaged and the rental unit is greasy from cooking, I cannot consider that to be extraordinary damage.

The 1 Month Notice to End Tenancy for Cause is hereby cancelled and the tenancy continues.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the *Act* states that if the tenant pays the rent within 5 days of service, the notice is of no effect. The landlord testified that the notice was served on November 19, 2014 and the tenant paid the rent in full on November 24, 2014. Therefore, I find that the notice is of no effect and is cancelled, and the landlord now has the \$400.00 security deposit again.

The tenants have also applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and have testified that if the heat is turned off in the landlord's unit, the thermostat in the rental unit doesn't work. The landlord didn't deny that either, and I hereby order the landlord to ensure that the tenants have heat that they can control from the thermostat in the rental unit.

The tenants have also applied for an order suspending or setting conditions on the landlord's right to enter the rental unit, and for an order authorizing the tenants to change the locks to the rental unit. Section 29 of the *Residential Tenancy Act* states that a landlord must not enter a rental unit that is occupied by a tenant for any reason unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I hereby order the landlord to comply with Section 29 of the *Act*, and if the landlord fails to do so, the tenants will be at liberty to make an application for monetary relief. I further order the landlord to remove all of the landlord's belongings in the storage area in order to provide the tenants with their right to quiet enjoyment of the entire rental unit.

I decline to order the tenants to change the locks to the rental unit because the landlord and the landlord's family reside in the same building, and an emergency may exist that would require a landlord to enter.

Since the tenants have been successful with the application, the tenants are also entitled to recover the filing fee. I hereby order the tenants to reduce rent for a future month by \$50.00.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated November 19, 2014 is hereby cancelled and the tenancy continues.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is hereby cancelled.

I hereby order the landlord to comply with the *Residential Tenancy Act* by ensuring the tenants have heat that they can control from the thermostat in the rental unit.

I hereby order the landlord to refrain from entering the rental unit unless one of the reasons in Section 29 of the *Residential Tenancy Act* as outlined above exists. If the landlord fails to comply, the tenants will be at liberty to apply for monetary relief.

I further order the landlord to remove all of the landlord's belongings in the storage area in order to provide the tenants with their right to quiet enjoyment of the entire rental unit.

The tenant's application for an order authorizing the tenants to change the locks to the rental unit is hereby dismissed.

I hereby order the tenants to reduce rent for a future month by \$50.00 as recovery of the filing fee.

This order is final and binding and may be enforced.

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: December 31, 2014

Residential Tenancy Branch

