



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing, including the two tenants and the landlord's daughter as representative for the landlord. They were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord made no application or request at this hearing.

The landlord provided evidence that the 1 Month notice was personally served to both the tenants on December 21, 2014. The tenant KC gave sworn testimony that she personally served the landlord with the Application for Dispute Resolution hearing package on December 29, 2014. I accept that the tenants were duly served with the 1 Month Notice and that the landlord was duly served with the tenants' Application for Dispute Resolution hearing package. The landlord testified that she submitted further documentary evidence for this hearing on January 2, 2014, serving it to the tenants that same day. The tenants confirmed receipt of these additional materials.

The landlord also served and submitted a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") on January 2, 2015. The landlord testified at this hearing that the rental amount of \$750.00 was paid in full by the tenants the day they received the 10 Day Notice.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

Background and Evidence

This month to month tenancy began on December 15, 2014 with a rental amount of \$750.00 payable on the first of each month. The tenants live downstairs and the landlord lives upstairs with his family in this residential premises. The landlord continues to hold a security deposit of \$375.00 paid by the tenants on December 8, 2014.

The tenants applied to cancel the notice to end tenancy issued by the landlord. The landlord's 1 Month Notice provides the following as grounds to end the tenancy;

- that the tenant(s) or a person permitted on the property by the tenant(s) has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- that the tenant(s) has engaged in illegal activity that has, or is likely to;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; or
 - jeopardize a lawful right or interest of another occupant or the landlord.

The landlord's representative ("landlord S") testified that the tenants smoke on the property. Her testimony was that she was not certain the tenants smoke within the rental unit but she has smelled smoke through the vents on at least one occasion. Landlord S testified that the tenants smoke regularly outside the rental unit but near the building. She was unable to specify whether this smoking took place on or off the residential property. Landlord S stated that she believes the tenants also smoke marijuana. Therefore, she testified, she has included within the grounds to end tenancy that the tenant has engaged in illegal activity that may affect enjoyment, security, safety or well-being of another occupant or jeopardize the lawful right or interest of another occupant.

Landlord S testified, and provided a handwritten summary, in which she identified one occasion that the hot water was off on the premises. She testified that, on attending to the basement unit where the tenants reside, there were many items stored within the area where the boiler was located. She testified that, on request, the tenants moved the items to allow access to the boiler. Both parties testified that the tenant BG re-set the pilot light to restart the boiler. Landlord S testified that she had asked tenant BG not to touch the boiler.

Further, Landlord S testified that the relationship between the tenants and the landlord has resulted in a “hostile environment” where she and her family feel unsafe.

Both tenants testified that they had advised the landlord on move-in that they smoked. They both testified that the landlords had only asked that the tenants smoke off the property. Both tenants also testified that they do not smoke within the rental unit. Tenant KC testified that, on one occasion, the landlord found her smoking directly outside the premises and the landlord asked her not to do so. She has not smoked inside or near the residential premises since that time.

With respect to the boiler incident cited by the landlord S, Tenant BG testified that the landlords were unable to fix the boiler and that he followed the directions on the outside of the machine to re-ignite the pilot light.

As well as applying to cancel the notice to end tenancy, the tenants are also seeking a monetary award of \$375.00 for expenses. Tenant KC testified that the tenants require funds if they are to move out of the residential premises. She made other claims with respect to expenses however she was unable to produce receipts or particularize the nature of the tenants’ monetary claim. The tenant KC testified that they “really just want their rent reduced” as it will be costly if they have to move and they cannot afford to both pay their rent and move.

The tenants also applied to have the landlord comply with the Act however they made no specific claim with respect to this application.

Analysis

On an application by a tenant to cancel a notice to end tenancy, the burden shifts to the landlord to show that the notice to end tenancy was valid and justified. The 1 Month Notice in this case relies on 3 grounds for cause to end the tenancy.

Two grounds relied upon by the landlord allege that the tenant has engaged in illegal activity with consequences to the landlord or other occupants. The landlords have provided no proof that the tenants have engaged in illegal activity. Pursuant to Policy Guideline No. 32, the term “illegal activity” includes a serious violation of a federal, provincial or municipal law. On relying on these grounds, the landlord must prove not only that the tenants have engaged in illegal activity but that they have done so in a way that has a harmful impact on the tenancy, other occupants or the premises. The policy guideline states that the illegal nature of the activity must be proven as must the harm

that it has caused. There is no testimony or documentary evidence to support a claim of illegal activity by the landlord in this matter.

The other ground relied upon by the landlord to end this tenancy is that the tenants have seriously jeopardized the health, safety or lawful right of another occupant. The landlord S testified that the tenants used the boiler room for storage and that the tenant BG lit the pilot light for the boiler to restart it. Landlord S stated that the landlord also relies on the fact that the tenants smoke cigarettes as a health concern. The landlord S's testimony did not provide evidence of other infractions or circumstances where the tenants may have created serious jeopardy to the health or safety of another occupant. In fact, the boiler incident appears to be an isolated incident. I accept the tenants' testimony that they do not smoke on the premises. Overall, I find there is insufficient evidence to support the claim that the tenants have seriously jeopardized health, safety or lawful right of another occupant.

I find that the landlord has not shown, on a balance of probabilities, that an end to this tenancy is justified on the grounds provided in the 1 Month Notice. Given that finding, I grant the tenants' application to cancel the notice to end tenancy.

With respect to the tenant's monetary claim, an arbitrator may award damages for out of pocket expenditures that are proven at a hearing or for general loss when the value of a loss or item cannot be determined. However, at this hearing, the tenant did not provide any documentary evidence to support loss or damage. Nor did the tenant provide any testimony to explain or particularize the loss they seek reimbursement for. The tenant KC's testimony was that the tenants can't afford to both move and pay rent and therefore they should receive a monetary award or have their rent reduced. Based on the lack of evidence of monetary loss or a monetary claim that meets with the requirements of the *Residential Tenancy Act*, I dismiss the tenants' application for a monetary award.

The tenants presented no evidence and did not provide a reason to order the landlord to comply with the *Act*. I dismiss the tenants' application to order the landlord to comply with the *Act*.

As the tenants were successful in their application to cancel the notice to end tenancy, I find that the tenants are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant the tenants' application to cancel the notice to end tenancy. The tenancy will continue.

I dismiss the tenants' application for a monetary award and I dismiss the tenants' application for an order to have the landlord comply with the *Act*.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$50.00 filing fee paid for this application. To implement this portion of this decision, I order the tenants to withhold \$50.00 from a future monthly rent payment to the landlord.

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: January 28, 2015

Residential Tenancy Branch