



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 Notice to End Tenancy was personally served on the Tenant on November 27, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing, by registered mail to where the landlord carries on business. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated November 27, 2014?

Background and Evidence

The tenants entered into a tenancy agreement with respect to another rental unit in the rental property on March 3, 1996. The present rental unit is the third unit the tenants have rented. The present rent is \$595 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$300 at the start of the tenancy.

The landlord seeks to end the tenancy based on the following evidence:

- On May 21, 2012 the tenant's son and representatives of the landlord engaged in a dispute with the tenant's son where the son verbally abused the landlord including the screaming of obscenities. The landlord wrote a letter to the tenant dated June 1, 2012 outlining the behaviour. The son no longer lives with the tenants.
- On November 7, 2012 the landlord wrote to the tenant noting that an exterior light has been removed and advising that it was not permissible to do so.
- On May 6, 2013 the landlord wrote to the tenant advising the exterior lights were not to be covered to dim the lights and requesting the cloth covers be removed.
- On July 2, 2013 the landlord wrote the tenants advising they were in breach of their Tenancy Agreement and asking to remove the material covering the exterior lights.
- On October 24, 2014 the landlord wrote to the tenant stating the tenants had made structural alterations to change the exterior lighting without written permission. The landlord produced a photo of the exterior light where it appears the cover has been darkened. The landlord testified this is a security risk to the other residents as it limits the use of the security cameras as well as limits the visibility of objects that might trip residents.
- The landlord testified they have received a report of the male tenant breaking a parking sign. The sign was on municipal property.
- At the end of November the female tenant and the representative of the landlord engaged in a verbal dispute over missing belongings from the tenant's storage area. The landlord testified the tenant became verbally abusive. It turned out that the belongings had been inadvertently placed into the storage locker of another resident.

The tenant disputes the landlord's evidence based on the following:

- The incident involving the tenant's son is not relevant as the tenant's son is no longer living in the rental unit. Further, the landlord should not be permitted to rely on it given the long passage of time.
- The letters dated November 7, 2012, May 6, 2013, July 2, 2013 relate to another rental unit. Further, the tenant submits that the landlord initially permitted the tenant to take out the light bulb in order for her Christmas lights to show up brighter. The tenant tightened the bulb and removed the material covering the light on request. Further, the letters were requests and not breach letters.
- The tenant did not receive the letter dated October 24, 2014 and was not aware of the contents. After receiving the Notice to End Tenancy she approached the representative of the landlord asking the basis for the Notice but the landlord refused to provide her with the information.
- The tenant disputes that she verbally abused the representative of the landlord.

Grounds for Termination

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;

Analysis

The landlord has the burden of proof to establish sufficient grounds to end the tenancy based on the grounds set out in the Notice to End Tenancy. The burden of proof is on a balance of probabilities.

After carefully considering the disputed evidence presented at the hearing I determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The only grounds raised by the landlord is the allegation that the tenants have breached a material term of the tenancy agreement and failed to rectify the breach within a reasonable time after receiving written notice to do so.
- The landlord failed to prove that the incident relating to the tenant's son in late May 2012 is grounds to end the tenancy. I do not consider the landlord's letter of June 1, 2012 as a breach letter. Even if it was the tenants have rectified the breach. The son no longer lives in the rental unit. The landlord has not proceeded with taking steps to end the tenancy relating to this incident for over two years.
- I do not consider the letters dated November 7, 2012, May 6, 2013 and July 2, 2013 relating to the covering of the exterior lights amount to a breach letter as they do not give the tenant a time to rectify the breach. Further, they relate to another rental unit. The tenant rectified the problem after receiving notice from the landlord to do so.
- I do not consider the letter of October 24, 2014 as a breach letter as it does not give the tenant a reasonable time to rectify the breach. Further, the landlord failed to prove the letter was served on the tenant. The tenant denies receiving it. The landlord presented insufficient evidence to establish it was sufficient served. The landlord failed to prove the tenants altered the light. The tenants deny doing it. The landlord did not witness it being altered. It appears that the problem has now been rectified. Both parties deny doing anything to rectify the problem.
- The conduct of the male tenant in breaking a stop sign on Municipal property and the female tenant in dealing with her belongings in storage is inappropriate. However, the landlord did not give the tenants a breach letter which is required under section 47(1)(h) of the Residential Tenancy. As a result the landlord has

not satisfied the requirements of that section. An arbitrator is not permitted to consider grounds that have not been identified in a Notice to End Tenancy.

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 27, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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 06, 2015

Residential Tenancy Branch

