Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution in which the Tenants sought to set aside a 1 Month Notice to End Tenancy for Cause (the "Notice") and to recover the filing fee.

The Tenant T.C. appeared at the hearing on his own behalf and as agent for H.D. and M.D. The Landlord was represented by an agent, P.B. who advised that the Landlord was not able to attend the hearing as she was undergoing a medical procedure. The Landlord did not request an adjournment and P.B. confirmed he was instructed to deal with the application in her absence. The hearing process was explained and the participants were asked if they had any questions. The participants provided affirmed testimony and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first.

Issues to be Decided

1. Should the Notice be cancelled?

2. Are the Tenants entitled to recover the amount they paid to file the application?

Background and Evidence

LANDLORD'S EVIDENCE

Although the Landlord submitted late evidence, J.C. confirmed he received the LL's late evidence and took no issue with its introduction. Accordingly, I accepted the Landlord's evidence.

The Landlord provided a copy of the residential tenancy agreement dated September 1, 2013 between the Landlord and T.C., and P.B. Other adult occupants were noted as J.B., F.M. and H.D. The agreement further specified that monthly rent was payable in the amount of $2,750.00 per month on the first of the month and that a security deposit of $1,375.00 was paid on August 28, 2013 (the "Agreement").

Attached to the Agreement was a Condition Inspection Report which was completed on September 1, 2013 and which indicated the following deficiencies:

- damaged blinds in the kitchen;
- peeling paint on the ceiling in the basement bedroom;
- a loose fan cover; and
- cracked floor tiles in the basement laundry.

(the "C.I.R.")

The Landlord also provided a copy of a letter from the municipality dated January 13, 2014 directing the Landlord to place a development sign on the property by no later than January 12, 2015.

P.B. advised that on January 9, 2015 the Landlord erected the development sign on the property. He also stated that while the Landlord was at the property, she spoke to the Tenants and advised them that an application had been made, that the intention was to demolish the rental property, but that financing had yet to be obtained.

P.B. stated that the Landlord also went into the property on this date and noted the "dilapidated condition" of the property and decided the tenancy needed to end.

On January 14, 2015 the Tenants provided the Landlord with a letter, dated January 13, 2014 wherein the Tenants note various issues with the rental property. P.B. submitted that this letter was purposely misdated to appear as though it had been given to the Landlord shortly after the tenancy began. The issues noted by the Tenants in this letter include:

- issues with the electrical panel which result from having the kitchen stove and clothes dryer on the same breaker;

- the two refrigerators downstairs and the clothes dryer and oven downstairs do not work;
- the electrical pole connecting power to the house leaning at a severe angle;
- water damage to a ceiling tile in the basement as a result of a leak in the kitchen;
- ceiling lights;
- a leak in the garage roof;
- broken floor tiles in the basement;
- peeling paint in the bathroom upstairs;
- scratches on the living room wood floor;
- scratches on the wall;
- small holes in the wall; and
- a broken light fixture in the kitchen.

P.B. advised that the Landlord issued the Notice on January 31, 2015. Notably, the Notice is not dated, yet an effective date of February 28, 2015 is specified on the Notice.

The reasons cited in the Notice were as follows:

- the Tenant has caused extraordinary damage to the unit or property; and

- the Tenant has assigned or sublet the rental unit without the landlord's written consent.

P.B. testified that the Tenants were personally served on January 31, 2015. Section 47 (f) provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. The Tenants made their application for dispute resolution on February 10, 2015.

The Landlord failed to provide any photos of the condition of the property. When I asked P.B. if he had any such evidence of the condition of the property giving rise to the Notice, he responded that the condition was as described by the Tenants in their letter to the Landlord. He submitted that as the C.I.R. did not indicate such damage, I was to conclude that the issues noted by the Tenants in their letter dated January 13, 2014 were *caused* by them and were sufficient grounds to end the tenancy for cause.

Notably, some of the issues raised by the Tenants in their letter included issues noted on the C.I.R.

When I asked P.B. if the Landlord had communicated her concerns about the condition of the property to the Tenants and offered them an opportunity to make repairs, P.B. replied that the Landlord's only communication was the Notice.

P.B. also submitted that the Tenants had sublet or assigned the rental without the Landlord's consent. In support he noted that M.D. was listed as a tenant on the Tenants' Application for Dispute Resolution, yet M.D. was not on the tenancy agreement. P.B. stated that the Landlord

had never spoken to M.D., and while the Landlord accepted rental cheques from M.D., she simply did not notice his name on the cheques.

TENANT'S EVIDENCE

T.C. denied any damage to the rental unit as claimed by the Landlord.

T.C. testified that he sent the letter to the Landlord on January 13, 2015 (which he conceded was erroneously dated 2014) requesting repairs to the rental unit after speaking with the Branch about his concerns that the Landlord failed to make such repairs. He stated that he was advised to put his requests in writing.

T.C. further testified that the first time he was aware the Landlord intended to demolish the rental unit was when he saw the sign posted on January 9, 2015. He also provided in evidence a copy of a building plan for the rental unit which he said he obtained from the internet.

T.C. stated that the Landlord did not in fact come into the rental property on January 9, 2015 as claimed by P.B.

T.C. testified that the Landlord was aware that M.D. lived in the rental unit, had spoken to him on numerous occasions and had accepted rent from him. In support the Tenants provided in evidence copies of rent cheques written by M.D. to the Landlord for the following months: May 2014, June 2014, July 2014, August 2014,

Analysis

In order for a Notice to End Tenancy to be effective, it must comply with section 52 of the Act which provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

As the Notice was not dated, it is ineffective pursuant to section 52.

While this is sufficient to cancel the Notice, I find that the Landlord has also failed to meet the burden of proving that the Notice should be upheld for the reasons cited in the Notice.

As indicated during the hearing, the evidence surrounding condition of the property was minimal. The Landlord failed to provide any photos or any other evidence which would support her claim that the Tenants damaged the property. Further, I do not accept P.B.'s submission that I should simply rely on the letter from the Tenants and the C.I.R. to conclude that any repairs requested by the Tenants must have been as a result of damage they caused.

While the Tenants have not made an application for a repair Order pursuant to sections 62 and 32 of the Act, the Landlord is cautioned to comply with the Act, and the Policy Guidelines in response to the Tenants letter dated January 13, 2014. Residential Tenancy Policy Guideline 1 provides in part as follows:

> The Landlord is responsible for ensuring that rental units and property meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property.
> …
>
> The tenant is not responsible for reasonable wear and tear to the rental unit or site.
> …
>
> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

T.C. testified that the Landlord did not enter the rental unit on January 9, 2015. The Landlord was not at the hearing and did not submit any photos or other evidence which would support P.B.'s information that she entered the rental unit and observed the alleged "dilapidated condition of the property".

Where on party provides a version of events in one way, and the other party provides an equally probably version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find that it is not possible, on a balance of probabilities, to conclude that the Tenants caused damage to the rental unit as alleged by the Landlord.

Further, I find there is insufficient evidence to find, on a balance of probabilities, that the Tenants assigned or sublet the rental unit without the Landlord's written consent. As T.C. and H.D. continue to occupy the rental unit and have not given up their rights and responsibilities to M.D., they cannot be found to have assigned their tenancy.

Further, I accept the evidence of the Tenants that the Landlord had met M.D. on numerous occasions and had accepted rent cheques from him. I find that she was aware that M.D. was residing in the rental property since at least May of 2014, and until issuing the Notice, did not communicate her disagreement with his occupation of the rental unit. I find that the Landlord is prevented from claiming this as a reason to end the tenancy by the principle of estoppel.

In a 2005 decision of the Supreme Court of Canada, *Ryan v. Moore,* 2005 2 S.C.R. 53, the court explained the issue of estoppel by convention as follows:

> 59 …. After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:
>
> (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of *silence* (impliedly).
>
> (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.
>
> (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

In accepting the rental cheques from M.D., and failing to communicate her disagreement with his occupation of the rental unit, I find that the Tenants correctly assumed the Landlord provided her implied consent for M.D. to reside in the rental unit. To allow the Landlord to change from this presumed position would be detrimental to the Tenants. I accept that they were not aware of the Landlord`s disagreement, nor were they provided an opportunity to correct the situation, and find that it would be unfair to allow the Landlord to end the tenancy for this reason.

For the foregoing reasons, I grant the Tenants' request to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

The Tenants, having been successful, shall be entitled to recovery of the filing fee and shall be granted a one-time credit of $50.00 towards their next month's rent.

Conclusion

The application is granted and the Notice is set aside. The Tenants are to be credited the filing fee as a one-time $50.00 reduction in their next month's 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: March 05, 2015

Residential Tenancy Branch