



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, (CNC)

Introduction

This hearing was convened by way of conference call in response to the tenant's application for other issues. The tenant requested to amend their application to include an application to cancel a One Month Notice to End Tenancy for cause. I have allowed the tenants to amend their application as they have provided a statement for amendment detailing the One Month Notice to End Tenancy and the reasons given to cancel the Notice. I find the landlord would not be prejudiced by this amendment as the landlord received a copy of this statement outlining the tenants intent prior to the hearing.

The tenants and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?
- What are the tenant's entitled to keep the wood stove?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2013 for a fixed term of one year. The agreement was extended for another year's term on August 01, 2014. Rent for this unit is \$1,000.00 per month due on the 31st of each month. The tenants paid a security deposit of \$500.00 on August 28, 2013.

The One Month Notice to End Tenancy for cause

The landlord testified that the tenants were served a One Month Notice to End Tenancy for cause (the Notice). This was served by registered mail on December 05, 2014 and provided two reasons to end the tenancy as follows:

- The tenant has not done required repairs to the unit, site or property.
- The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenants have drilled some holes into the kitchen window frame which have not been repaired despite written notice to do so. The tenants have attached wood to the carport which has not been removed and the holes repaired after written notice to do so. The tenants have changed the shower head in the unit without prior written permission of the landlords as stated in the addendum to the tenancy agreement. The new shower head could alter the water pressure and put pressure on the water lines. The tenants were given 10 days to make good on these repairs and change back the shower head.

The landlord testified that the tenants have breached a materially term of the tenancy agreement and kept an uninsured vehicle on the property. The addendum to the agreement stipulates that no uninsured vehicles must be on the property. The landlord put this in writing to the tenants on December 17, 2014 but did not give the tenant a time frame to insure or remove the vehicle.

The landlord testified that the tenants store garbage and recyclable materials on the property along with bird seed. These materials and bird seed could become a magnet for rodents which could then get into the house and the landlords would then be responsible to deal with these. The landlord testified that they pay privately for a weekly garbage pickup on the property.

JM disputed the landlord's claim. JM testified that they did drill two holes in the window frame and when the landlord wrote to the tenants concerning this the tenants wrote back and explained that they would repair the holes and intend to do so as soon as the warmer weather comes, due to the fact that the materials used for repair should not be used in colder weather. JM testified that they did put up some wood in the carport for a hockey area and have since removed the screws but the wood remains standing there. TM testified that the shower head was replaced because it was old and the tenants had concerns about mould being harboured in the shower head. TM testified that this can be replaced with the landlord's shower head or a new one the same as the landlords; however, the one the tenants used is compatible with the water lines and is approved to be used as a shower head. It is an improvement on the landlords' older one. JM testified that he has an uninsured vehicle on the property which is used when JM is firefighting. As it is not used all year it is stored on the property and the landlords were aware of this when the tenants moved in as at that time JM had a camper that was used for part of the year. JM testified that he is happy to get storage insurance on the vehicle if the landlords require it. JM testified that they have one garage bin with a lid for household garbage and this is put out for collection. Any other items are recyclable materials which are taken too be recycled effectively. JM testified that there was a bag of bird seed inadvertently left out overnight and this was then put in a plastic bin.

The landlord seeks an Order of Possession for cause; the tenants seek to have the Notice cancelled.

Through the course of the hearing the landlord and the tenants came to an agreement in settlement of the tenants' claims regarding the wood stove.

The Parties did not require me to make a decision in this matter but required me to record the agreement they mutually reached.

This agreement is as follows:

- The tenants agreed not to place any combustible materials within three feet of the wood burning stove
- The tenants agreed to only burn dry wood in the stove with a moisture content of less than 20 percent and wood that has been cut into smaller pieces.
- The tenants agreed to purchase a moisture meter up to the value of \$30.00 and to ensure the wood is tested to ensure its moisture level is below 20 ~~degrees~~ percent before burning it in the stove;
- The tenants agreed to allow the heating inspector into the unit to carry out an inspection of the wood burning stove and chimney and to ensure the wood stove is not used for 24 hours prior to any inspection. If repairs are required the tenants agreed to allow the landlord and or any contractors into the unit to make any repairs deemed necessary by the heating inspector;
- The landlord agreed to compensate the tenant an amount of \$50.00 a month for any months the wood stove is out of commission if repairs are required;
- The parties agreed that if repairs are required these will be completed on or before May 01, 2015.

Analysis

Both Parties have reached an agreement during the hearing concerning the word burning stove only and this agreement has been recorded by the Arbitrator pursuant to section 62 of the Act.

With regard to the tenants' amended application to cancel the Notice, I have considered the evidence before me and will go through each point raised by the parties. The landlord claimed the tenants have damaged the property and not made the required repairs. I have considered the extent of the damage and find that the damage presented by the landlord namely two screw holes in the window frame and some boards screwed to the carport are minor things which can be repaired quickly as soon as the weather permits. While I concede that the tenants should not have made any holes in the landlord's property I must weigh up the extent of the damage against the measure of evicting the tenants. It is my decision that this damage is so minor that this standing alone would not warrant an end to the tenancy. However, I do caution the tenants to ensure this damage is repaired as soon as weather permits and to ensure the repairs are completed in a satisfactory manner.

With regard to the landlord's claim that the tenants have made alterations to the property by changing a shower head which may cause damage to the water lines; if the shower head that was originally in place was old I find the tenants could have changed it for an approved shower head as long as the tenants replaced this with the landlord's shower head at the end of the tenancy. This is not a permanent structural change but rather one that could have enhanced the landlord's shower facilities. I find therefore that the clause in the addendum that states there shall be no alterations, additions, repairs or painting without prior notification of the landlord for written approval is an ambiguous term that could only apply to permanent alterations, additions or repairs and not temporary ones that can be replaced at the end of the tenancy. I find there is insufficient evidence to show that the replacement of the shower head has or is likely to cause damage to the water lines and therefore there is insufficient evidence to warrant an end to the tenancy on this ground. I do however caution the tenants to ensure they replace their shower head with the landlord's one or one of similar structure to the landlords at the end of the tenancy.

With regard to the issue over the garbage, recycling or bird seed; I find there is insufficient evidence to show that the tenants have repeatedly left garbage exposed or

failed to put garbage out for collection. Other recyclable materials that the tenants take to a recycling depot may be stored on the property that the tenants rent for removal to the recycling depot without censure from the landlord about how or when they are removed. I am satisfied that the bird seed was inadvertently left out overnight and that this has now been placed in a plastic bin. There are insufficient grounds to end the tenancy for this issue. I do however caution the tenants to ensure any recyclable materials are stored in a safe manner and taken to the depot regularly so they do not accumulate on the property for long periods of time.

With regard to the uninsured vehicle on the property; I am satisfied that the addendum does state that no unlicensed/uninsured vehicles must be stored on the property. I am also satisfied that the landlord did write to the tenants informing them that the uninsured vehicle must be insured or removed as this is a breach of the tenancy agreement; however, the landlord has not specified a time frame in which the tenant must undertake to remove or insure this vehicle. As the letter was sent on December 17, 2014 I find the tenant must take immediate steps to either insure or remove this vehicle from the property in order to comply with the addendum to the tenancy agreement.

I find the landlords request to uphold the Notice is denied; however, after careful consideration I have cautioned the tenants to ensure they comply with the tenancy agreement and addendum to that agreement. If the tenants do not do so as mentioned in this decision the landlords are at liberty to serve a new One Month notice to End Tenancy for cause.

Conclusion

The tenants' amended application to cancel the One Month Notice to End Tenancy for cause is upheld and the tenancy will continue.

The agreement reached between the parties concerning the wood stove is in full, final and binding settlement of the tenants' application concerning this matter.

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*.

NOTE: THIS DECISION CORRECTS AND REPLACES THE DECISION I ISSUED ON JANUARY 05, 2015, WHICH HAD A CLERICAL ERROR.

Dated: March 05, 2015

Residential Tenancy Branch

