



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MND, MNSD, FF, O

Introduction

In the first application the tenant seeks to cancel a one month Notice to End Tenancy dated April 21, 2015, given alleging cause.

In the second application the landlords seek an order of possession pursuant to the Notice and a monetary award for damage to a cottage on the same property.

At the start of the hearing it became apparent that the cottage to which the damage is said to have been caused is not rented to the respondent tenant but to his witness Ms. McL. As a result the landlords' application for a monetary award for damage to the cottage was not dealt with at this hearing as Ms. McL., though a witness in this proceeding, is not a party named in the application. The landlords are free to proceed against her in another application.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has given cause, as alleged in the Notice, for this tenancy to end?

Background and Evidence

The rental unit is a bedroom in a rooming house, shared with two other tenants chosen by the landlords. The tenants share bathroom, kitchen and living areas.

There is no written tenancy agreement.

The tenancy with the respondent tenant started in April 2010 on a month to month basis. The rent is currently \$500.00, due on the first of each month, in advance. The landlords hold a \$225.00.

The tenant's witness Ms. McL. rented a cottage on the same property since November 2009. She vacated the cottage on or about March 15th of this year.

The Notice in question alleges that the tenant or a person permitted on the property by him has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord,
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and
- put the landlord's property at significant risk.

Ms. F testifies that in March 2015 the tenant attempted to remove his couch from the unit but was unable to get it through a door. She says he left it blocking the doorway and had refused the landlords' requests that he move it. She has given him written direction to move the couch but he has failed to comply.

She says the tenant assaulted her father about a year ago by punching him.

She says there is a bad odour emanating from the tenant's room and that he is keeping a cat in the room contrary to his tenancy agreement.

She says that the tenant is using various parts of the common areas to store things like tools and appliances.

She says the tenant has broken a pane of glass in the door to his room and has failed to repair it after being requested to do so.

The landlord Mr. F. testifies that he is concerned about safety on the premises because of the tenant. He says the tenant has damaged the cottage and there is reason to be concerned that he will damage his rental unit too.

He says that the shared house is full of the tenant's belongings, like tools in the dining room.

He says that the tenant is not permitted to smoke but that he is smoking in his room.

He says that Ms. McL. is staying overnight at the tenant's rental unit and is not supposed to.

The tenant Mr. I. did not initially give evidence in response to the landlords' testimony. Rather, his advocate alleged that the tenant has received an earlier, defective Notice, that the tenant has permission for the cat, that the couch is now outside as of April 30th and the tenant's room was cleared. The advocate disputes the allegations of odour and an intimation by the landlords that they were fearful of the tenant.

Ms. McL testified it the tenant is keeping her cat for her until June when she moves into another place and that he is also storing her belongings for her. She admits that she is also storing things in the backyard of the premises.

The tenant later testified that he did not assault Ms.F.'s father a year ago but was defending himself. He says he didn't break anything when he put the couch against the door. He says that all the bags he has placed on top of the couch and as shown in the photos adduced by the landlords, contain clean clothes.

Analysis

As stated in the oral decision rendered after hearing, the landlords have placed themselves in a very difficult situation by not have prepared and obtained a written tenancy agreement.

Their claim that the tenant was not allowed to smoke or have pets are terms that would normally be contained in a written tenancy agreement.

Section 6(2) of the *Residential Tenancy Act* (the "Act") provides:

- (3) A term of a tenancy agreement is not enforceable if
 - (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Where the terms of a tenancy agreement are verbal only, there is a great risk that they have not been "expressed in a manner that clearly communicates the rights and obligations..."

The landlords' have not proved on a balance of probabilities that the tenant was not permitted to smoke or have pets. In any event, an alleged breach of such terms is not clearly indicated in the Notice and so cannot serve as a ground for eviction.

I find that the tenant placed a couch in front of a exterior doorway inside the premises, preventing entry and egress to the common areas of the premises. I find that he failed to restore access through the door though requested to do so by the landlords. I find that the tenant thereby significantly interfered with access to and from the premises by other occupants and the landlords and seriously jeopardized the health and safety of another occupant by barring an evacuation route from the home in event of fire or other disaster.

Both of those grounds are lawful grounds to end a tenancy under s. 47 of the *Act*.

Conclusion

The Notice to End Tenancy dated April 21, 2015 is a valid Notice. This tenancy ends on May 31, 2015. The landlords will have an order of possession.

I authorize the landlords to recover the \$50.00 fee for their application from the security deposit they hold from the tenant.

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: June 02, 2015

Residential Tenancy Branch

