



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Davcor Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPC MND CNC FF O

Introduction

This hearing dealt with applications by the tenants and the landlord. On May 28, 2015 the tenants applied to cancel a notice to end tenancy for cause. Their application was scheduled to be heard before me on July 15, 2015. On July 6, 2015 the landlord applied for an order of possession and monetary compensation. The landlord's application was scheduled to be heard on September 10, 2015. In the hearing on July 15, 2015 I discovered that the landlord had filed an application, but had only submitted one package of evidence, which had been filed with the landlord's application. I determined it was appropriate to adjourn the tenants' application and join it to be heard with the landlord's application.

The hearing for the joined files reconvened on August 12, 2015. As in the first hearing, the landlord and both tenants participated in the teleconference hearing. The parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

I informed the parties that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the landlord's application in the conclusion of my decision.

After the conclusion of the teleconference hearing, the Branch received 72 pages of evidence from the landlord via fax. As this evidence was not submitted in accordance with the rules of procedure, I did not admit or consider it.

Issue(s) to be Decided

Is the notice to end tenancy dated May 23, 2015 valid?

Background and Evidence

On May 23, 2015 the landlord served the tenants with a notice to end tenancy for cause. The notice indicated the following reasons for ending the tenancy:

1. the tenants seriously jeopardized the health, safety or lawful right of the landlord;
2. the tenants put the landlord's property at significant risk;
3. the tenants caused extraordinary damage to the unit or property;
4. the tenants did not do required repairs of damage to the unit; and
5. the tenants breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after notice to do so.

Landlord's Evidence

The landlord gave testimony regarding several issues with the rental unit and property which formed the basis for serving the notice to end tenancy.

The landlord stated that the tenants were aware for several months of water damage in the upstairs bedroom, but they failed to report the damage in a timely manner, and as a result the damage became significantly worse.

The landlord stated that the cover was blown off the hot tub and it filled with water, and then the tenants replaced the cover and the hot tub filled with black mould. The landlord acknowledged in the hearing that the hot tub was never included in the tenancy agreement, and the landlord had intended to remove the hot tub from the rental property.

The landlord stated that the tenants failed to properly care for the trees on the property, and now two of the trees are dead, one other tree is "very dead," and the bushes were never trimmed. The landlord stated that this has created a "dead landscape."

The landlord stated that the tenants reported a water leak in the living room ceiling, and when the landlord examined the ceiling she noted different colours of stains. The landlord stated that there must have been different instances of leaking to cause the differences in colouration, and the tenants did not report the earlier leaks.

The landlord stated that the tenants broke a plastic component on a blind, and they did not report that the crisper in the fridge was broken. The landlord also stated that the tenants failed to properly maintain the pool.

In the hearing the landlord confirmed that she has sold the property and the new owners will be taking possession on September 3, 2015

In the hearing the landlord referred to her photographs, emails and text messages between the landlord and the tenants and specific sections of the tenancy agreement. I note that none of the landlord's messages to the tenants refer to a material breach of the tenancy agreement.

Tenants' Response

The tenants submitted that the landlord's claims are unfounded. The tenants pointed out that the landlord failed to do a move-in condition inspection with the tenants and she repeatedly promised to do repairs that she did not complete. The tenants stated that on May 15, 2015 the landlord called to say that she was putting the house up for sale, and nine days later she served them with the notice to end tenancy.

The tenants stated that they never received written notice that they had breached a material term of their tenancy agreement, and they did not know what material term the landlord was referring to.

The tenants stated that the damage to the fridge crisper tray is normal wear and tear. The tenants stated that early in the tenancy they told the landlord that the blind did not work, and the landlord agreed in writing that she would replace it.

The tenants stated that they informed the landlord as soon as they were aware of the water damage in the additional bedroom, and the landlord explicitly told the tenants that they were not responsible for damage to the roof. The tenants stated that the landlord waited nine months before calling in a roofer.

The tenants stated that they immediately informed the landlord of the water leak that caused damage to the living room ceiling. They further stated that the landlord sprayed the area with bleach and now there are no noticeable stains or damage.

The tenants stated that they contacted the landlord the very first time that the hot tub cover came off and they repeatedly replaced the cover. The tenants stated that the landlord continually said she was going to remove the hot tub. The tenants stated that under the tenancy agreement they were not responsible for the hot tub, only the pool. In regard to the pool, the tenants were only responsible for professional swimming pool opening, closing and chemical monitoring. The tenants stated that they never allowed the water level in the pool to drop, it was the contractors hired by the landlord who did it.

The tenants stated that they irrigated the yard according to the landlord's instructions and agreed to increase the watering when the landlord requested it. The tenants stated that they do not believe that the trees are dead. The tenants stated that there were dry spots on at least one tree at the beginning of the tenancy.

Analysis

I find that the notice to end tenancy is not valid, as the landlord failed to provide sufficient evidence to establish cause as set out in the notice.

I find no evidence to suggest that the tenants seriously jeopardized the health, safety or lawful right of the landlord; put the landlord's property at significant risk; caused extraordinary damage

to the unit or property; or did not do required repairs of damage to the unit. I also find that the landlord did not give the tenants clear written notice of a material breach of the tenancy agreement.

I find it is more likely than not that the landlord inflated some minor issues with the rental unit in an attempt to evict the tenants before new owners were to take possession of the unit. The landlord did not do a move-in inspection with the tenants and therefore she cannot provide evidence of the agreed-upon condition of the rental unit when the tenants first took occupation. This includes the condition of the trees and yard, the two areas of the house that sustained water damage, the fridge crisper, the blind, or any mechanical or other problems with the pool. The tenants were not responsible for the hot tub and had no obligation to care for it. I find, based on the emails between the parties, that the tenants were diligent in maintaining the property and reporting damage, and I accept as credible the tenants' testimony that they irrigated the yard as per the landlord's instructions.

Conclusion

The tenants' application to cancel the notice to end tenancy is successful. The tenants are therefore entitled to recovery of the \$50.00 filing fee for the cost of their application. I grant the tenants an order under section 67 for the balance due of \$50.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application for an order of possession is dismissed.

The landlord's monetary claim is dismissed with leave to reapply.

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: August 18, 2015

Residential Tenancy Branch

