



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution in which the Tenants sought to cancel a Notice to End Tenancy for Cause issued June 19, 2015 (the "Notice"), an order that the Tenants permitted to reduce their rent due to an inoperable stove and oven and to recover the filing fee.

The Landlord's spouse, S.H., appeared as his agent at the hearing (for ease of reference I will refer to her as "Landlord" in this my decision) as did both Tenants. 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 to cross-examine the other party, and witnesses, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. 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. Should the Tenants be permitted to reduce the rent paid due to the inoperable oven and stove?
3. Are the Tenants entitled to recover the amount he paid to file the application?

Background and Evidence

The Landlord testified that the tenancy began on April 1, 2015. Monthly rent was payable in the amount of \$650.00.

The Landlord testified that she served the Notice by regular mail on June 19, 2015. The reasons cited in the Notice were as follows:

- the Tenants have engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and,
 - jeopardize a lawful right or interest of another occupant or the Landlord
- The Tenants have not paid the pet damage deposit within 30 days as required by the tenancy agreement.

Section 90(c) of the Act provides that documents served in this manner are deemed served five days later; namely June 24, 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 June 30, 2015 such that they applied within the legislated time.

The Landlord testified as to the reasons for issuing the notice as follows

- The Tenants have plugged their scooter into the communal power source.
- The police repeatedly attend the rental unit.
- The Tenants have been screaming and fighting which disturbs other occupants of the rental building.
- The male Tenant has attempted to sell drugs to others.
- The male Tenant has been seen at the back of the building in the dark wooded area which is unsettling to other occupants.
- The Tenants have hung blankets over their windows in violation of the strata bylaws.
- The Tenants have not permitted access to the rental unit for the clearing of the dryer vent.

- The Tenants have not permitted access to the rental unit for the replacement of window seals and the window replacement workers will not return to the rental unit due to its “condition”.
- The Tenants failed to pay the pet damage deposit despite being required to do so pursuant to the tenancy agreement as well as the Landlord’s request in May 2015.

In support the Landlord introduced the following documents (which have been in part reproduced as written):

- A copy of the residential tenancy agreement which provides that the Tenants were to pay a \$100.00 pet damage deposit by May 1, 2015.
- A letter from P.R., who identified himself as a member of the strata council. In this letter he writes that the Tenant, C.H. was seen at the rear of the building at 9:10 p.m. on May 4, 2015 which some of the occupants of the rental building found “disturbing.”
- A letter from D.C., the president of the strata, dated June 18, 2015 who writes:

“...A couple of days ago the [local police] were here-three vehicles apparently, and one unmarked car, plainclothes plus [local police] in uniform, talking & pointing at your unit.

About half an hour ago, today, two more [local police] units pulled up, and one of them spoke to my neighbour who is caring for the dog.

It very much appears that there is something legal and heavy duty happening here, though we don’t know for sure, as [local police] have not spoken to strata council

We have had two verbal complaints from two units in the same hallway as [rental unit], stating they believe the [male tenant] has been stealing from them, and a third neighbor with a small baby has voiced concern and is quite nervous, and finds the constant police presence very disturbing and disruptive.

As far as council is concerned, we only deal with what we know to be factual, and our main concern at the moment is access to [rental unit] to replace the couple of window seals that were not done last year. If the window company needs to make another trip out here for your unit, I’m sure there will be an added cost, which might be passed on to you.

...”

- A letter from D.C. dated June 25, 2015 wherein she wrote:

“...”

Re: the window seals, only the completely failed seals were replaced when [former tenant] lived there, so the rest had to be done. As misfortune would have it, two of the three window seals ordered for that unit were wrongly sized, so they still need to be done.

The company replacing them will not send their workers back in there, due to the state of the place, possibility of needles around etc. so we will wait till they have gone, then go in and replace the last two seals.

So we will need to hear from you when the place is vacant.

...

- An undated letter from D.C. wherein she writes:

“ ...

With regard to the current, unfortunate situation with your renters in [rental unit], most of all our concerns are documented in the emails of June 18th, 22, and July 5th. which council has sent to you.

In addition to the serious concerns we have already documented in these emails, there was an incident last week where the long time resident of [unit number and name withheld in this my decision] informed council that your renter, [male tenant] told him he was selling oxycontin for ten dollars a tablet. In addition to this drug dealing, the [male tenant] has been seen climbing over the fence into the backyard of a resident, frightening her, then scaling a six foot fence when he realized he'd been seen. He then ran off toward the back of our complex.

With regard to the work that still needs to be done in the [rental unit], the company that was here to replace the windows [name of company], still need to go back into your unit, but they are not willing to send their workers back in there due to the deplorable and likely unsafe conditions of your unit.

As a result of this increasingly untenable situation, we, the strata council, cannot fulfill our responsibility to repair and maintain our building, and request relief from this situation regarding your renters.

Thank you

D.C.

President, Strata [number]”

- A letter dated June 16, 2015 from D.C. wherein she attaches an email from P.R. to another resident, S.J. with respect to allegations that the Tenants were plugging their scooter into his power source.
- A letter dated May 4, 2015 from D.C. wherein she advises the Landlord that the tenants in the rental unit next to the subject rental unit gave their notice because they believe that the Tenants were stealing from them and they were “concerned about all the yelling, fighting, and frequent police attendance.” D.C. further writes:

“ ...

*There is no clear evidence that your tenants have been stealing, that I am aware of, but from a strata viewpoint, they certainly have created a lot of unrest and suspicion, with some of their behaviors, and are clearly disruptive & disturbing other residents, with the yelling, police attendance, etc. One of their friends picked up your [male Tenant] one night around 10 p.m. and tore out of the pkg lot with such speed that a heavy trailer hitch flew out of the back and hit the pavement with such force, and loud bang that people thought they had hit a car. I was summoned, and couldn't find any damage to any other vehicle, but did find a half empty beer can plus the trailer hitch on the ground. These are examples of what has been going on.
...*

The Landlord testified that her husband informed the Tenants that their behaviour was unacceptable by telephone in May of 2015.

The Tenant, C.H., responded to the Landlord's allegations as follows.

C.H. admitted to the "yelling and screaming allegation" and stated that he and the other Tenant, D.L. had an argument when they first moved in. He further testified that he apologized for their behaviour after the warning and there hasn't been any more such allegations.

C.H. stated that the allegation that he was selling drugs was "ridiculous"; rather, he testified that he was having a conversation with another occupant and told the occupant what the black market price was for prescription pain medication. C.H. stated that he (C.H.) has a reputation as a drug addict and dealer and suggests this is why the other occupant mistook this conversation as an offer to sell drugs.

C.H. testified that the police attended the rental unit because C.H. had a court imposed curfew for which the police regularly check to make sure he is home.

In terms of the required repairs to the window seals and the allegation that the workers will not return to the rental unit, C.H. stated that "they" (presumably the Landlord or strata council) gave notice while the Tenants were away. C.H. further stated that "they" came into the rental unit illegally without giving notice.

In response to the Landlord's claim that the Tenants have not paid the pet damage deposit, C.H. confirmed that he refused to pay as the Landlord did not provide an oven and stove. When asked what amount the Tenants sought in terms of compensation for the lack of an oven and stove, C.H. stated that he did not know what was reasonable, but that they were forced to use a hotplate and microwave and that the Landlord promised them a stove when they first moved in.

In reply to the Tenants' submissions the Landlord stated as follows.

- The Tenants' house-sitters gave access to the rental unit for the purposes of the window seal replacement. After entering the rental unit, the workers refused to return due to the condition of the rental unit and their fear they may encounter needles.
- The Tenants did not inform the Landlord that the stove was not operable. The Landlord knew that the oven did not work, but were not informed that the stove did not work until the C.H. testified.

Analysis

The residential tenancy agreement provided that the Tenants were required to pay a pet damage deposit by May 1, 2015. I accept the Landlord's evidence that they also requested this payment and that the Tenants promised to pay, yet never did. The Tenants confirmed that they refused to pay the pet damage deposit because of the inoperable stove. I accept the evidence of the Landlord that while they were aware the oven did not work, that they had no notice that the stove was also inoperable. In any case, the Tenants are not permitted to withhold payment of the pet damage deposit simply because they believe the Landlord is in breach of the agreement.

Section 47 of the *Residential Tenancy Act* 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:
- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

Accordingly, I find that the Tenants are in breach of the tenancy agreement and the *Act* by refusing to pay the pet damage deposit within 30 days of May 1, 2015 and accordingly the Landlord has met the burden of proving the Notice should be upheld. The tenancy will end in accordance with the Notice.

As I have ended the tenancy pursuant to section 47(1)(a), I need not consider whether the Landlord has met the burden of proving that the tenancy should end in accordance with any other reasons cited on the Notice. That said, I note that the refusal of the workers to return to the rental unit for necessary repairs, is of significant concern as it appears the Tenants are failing to maintain the rental unit as required by the tenancy agreement and *Act*

The Tenants application for an order pursuant to section 65(1) is not applicable as the tenancy is ending and I therefore dismiss it with leave to reapply. The Tenants are at liberty to apply for

a further monetary order pursuant to sections 65(1) and 67 should they wish to seek compensation for the inoperable stove during the tenancy.

The Tenants application for recovery of the filing fee is dismissed.

Conclusion

The application is dismissed. The tenancy will end in accordance with the Notice. The Tenants' application for an Order permitting them to reduce their rent due to the inoperable stove is dismissed with leave to reapply. The Tenants application for recovery of the filing fee is dismissed.

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: September 08, 2015

Residential Tenancy Branch

