



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for cause and for a monetary order for recovery of the filing fee.

The landlord and the tenant attended the hearing and each gave affirmed testimony.

The parties both provided evidentiary material, however the landlord's evidence was not received by me prior to the commencement of the hearing and the landlord did not provide it to the tenant. Therefore, I ruled that the landlord's evidence cannot be considered.

The tenant testified that he served the Tenant's Application for Dispute Resolution, evidentiary material and notice of this hearing to the landlord by registered mail at the only address provided by the landlord, which is the rental unit address. The landlord did not dispute that and testified that he found out about the hearing while speaking with an Information Officer at the Residential Tenancy Branch. The tenant has provided a copy of a Registered Domestic Customer Receipt which contains the name of the landlord, address of the rental unit for the landlord, and is stamped by Canada Post with the date of August 27, 2015. The tenant has also provided a copy of a notice to end the tenancy given by the landlord which contains the same address for the landlord, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

The parties were given the opportunity to question each other with respect to the testimony and evidentiary material of the tenant, all of which has been reviewed and is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy given to the tenant was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this tenancy began on June 15, 2014 as a fixed term tenancy for one year and then reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. A copy of the tenancy agreement has not been provided, however the landlord testified that it contains an error stating that the tenancy began in 2015 but it was actually 2014.

Rent in the amount of \$1,550.00 is payable in advance on the first day of each month and the landlord collected a pro-rated amount for the first month of the tenancy, and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord served the tenant on August 17, 2015 by registered mail with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided by the tenant. The notice is dated August 15, 2015 and contains an effective date of vacancy of September 30, 2015. The reasons for issuing it are:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property.

The landlord testified that the first late payment of rent was in October, 2014, but the landlord does not know when it was paid. The tenant paid \$1,000 on the 1st of the month, and then was late for about 6 months by about \$550.00 and then paid some in advance.

The landlord also testified that the tenant was to take care of the pool, however after moving in he said the cleaner was very expensive, so the landlord agreed to pay \$250.00 toward the cost, but the tenant hired a pool guy who said it was going to cost 4 times that much. The tenant constantly calls or texts the landlord to do things, disturbing the landlord.

With respect to illegal activity that is likely to damage the landlord's property, the landlord testified that the tenant installed an air conditioner in living room without notifying the landlord and damaged the house with holes in the living room wall and one door. The landlord saw the damage when he inspected after giving notice and took photos sometime in September, 2015.

The landlord orally requested an Order of Possession because the parties have had a very bad experience with each other. The tenant had told the landlord that he was a good tenant, had a good job, made good money, and had good references, as well as a girlfriend, and the landlord trusted the tenant. However, the girlfriend didn't move in, and the tenant has called the landlord consistently, mostly about the pool. The tenant complained to the City about mosquitoes, and the landlord had to fill in the pool.

The tenant agrees that he's been late with the rent a couple of times but the landlord was always notified if the tenant was going to be late. At the beginning of the tenancy the landlord was told that the tenant works out of town and sometimes he wouldn't be able to get to the bank after returning home until after the 1st of the month, but sometimes rent was paid earlier than the first of the month, and the landlord agreed with that.

The tenant denies disturbing another occupant or the landlord, and testified that there are no other occupants, and the pool was an issue. The tenant agrees that he called the landlord once or twice a month about it, especially in the summer months. The landlord was quoted \$13,000.00 to have it filled in, but the tenant found a fellow who did it for \$2,500.00.

With respect to damages, the tenant testified that the air conditioner is a portable unit that sits in a window which is not attached and has not caused any holes. There is no damage at all to the rental unit. A small hole or dent in a wall exists from moving in, but the tenant has every intention of repairing it before the end of the tenancy. Further, a hole by the French doors was there at the beginning of the tenancy. The landlord told the tenant that the previous tenant had repaired it, but when the doors are open, it's not visible, and it hasn't been repaired. Also, a hole in a door is pre-existing and wasn't noticed by the parties when the tenant viewed the rental unit because the previous tenant had a poster covering the hole.

Analysis

Where a tenant disputes a notice to end the tenancy given by the landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

With respect to repeated late rent, the landlord was given a lot of leeway to find evidence to satisfy me when the tenant was late paying rent, but was only able to testify that the tenant was late in October, 2014. I find that the landlord has failed to establish repeated late rent.

With respect to disturbing another occupant or the landlord, the landlord testified that the tenant has harassed the landlord about the pool and other matters, however, that's a responsibility of the landlord. There are no other occupants, and therefore I find that the landlord has failed to establish that the tenant or a person permitted on the property by the tenant has unreasonably disturbed another occupant or the landlord.

With respect to the final reason for issuing the notice to end the tenancy, I find no illegal activity by the tenant. There is no evidence of that, and the landlord relies on the installed air conditioning unit without the landlord's knowledge. I cannot find that to be illegal activity, or that it caused any damage, and I find that the landlord has failed to establish that.

In the circumstances, and in the absence of any useful evidence from the landlord, I am not satisfied that the landlord had cause to issue the notice to end the tenancy, and I hereby cancel it.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee. I hereby grant a monetary order in favour of the tenant for that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated August 15, 2015 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: October 21, 2015

Residential Tenancy Branch

