



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Salesforce Marketing Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Landlord's application: OPC; MND; MNSD; O; FF

Tenants' application: CNC; FF

Introduction

This Hearing was convened to consider cross Applications. The Landlord seeks an Order of Possession; a Monetary Order for damages; to apply the security deposit towards satisfaction of the Landlord's monetary award; for "other" orders; and to recover the cost of the filing fee from the Tenants.

The Tenants seek to cancel two One Month Notices to End Tenancy for Cause issued August 26 and September 16, 2015 (the "Notices"); and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was established that the Landlord served the Tenants with its Notice of Hearing documents and copies of its documentary evidence by registered mail sent October 6, 2015. The Landlord did not provide each Tenant with the documents, as required under Section 89 of the Act. The Landlord put both copies of the documents in one envelope. Therefore, for the purposes of the Landlord's monetary claim, I do not find that the Tenant TH was served.

It was also established that the Tenants served the Landlord with their Notice of Hearing documents on September 8, 2015, and their amended Application (seeking to cancel the second Notice to End Tenancy) on September 23, 2015, and copies of their documentary evidence on October 21, 2015, all by registered mail.

Preliminary Matter

The Landlord's Application for Dispute Resolution indicates that it is seeking "other" relief; however, the Landlord did not provide sufficient details in its Application with respect to what other relief it is seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Landlord's application is dismissed.

Issues to be Decided

- Should the Notices be upheld or cancelled?
- Is the Landlord entitled to a monetary award for damages and to apply the security deposit towards satisfaction of its monetary award?

Background and Evidence

This tenancy began on August 1, 2015. Monthly rent is \$950.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$475.00 and a pet damage deposit in the amount of \$475.00 at the beginning of the tenancy.

With respect to the Notice dated August 26, 2015, the Landlord's agent MM testified that the male Tenant was seen engaging in a drug deal on August 25, 2015. She stated that another occupant in the building had witnessed the male Tenant meeting with another person outside of the rental property, exchanging money for drugs. The Landlord provided a photocopy of what she said was the male Tenant walking into the lobby of the rental property.

The Landlord's agent MM stated that she posted a warning letter on the Tenants' door on August 25, 2015. MM testified that later in the evening she had a call from a representative of the strata council advising that several occupants had also seen "drug activities", so she posted the Notice on the Tenants' door on August 26, 2015.

None of the other occupants were available to provide oral testimony. The Landlord provided a copy of an e-mail in evidence. MM stated that the Tenants' copy of the e-mail was altered to black out the name of the other occupant who sent the e-mail.

MM testified that the second Notice dated September 16, 2015, was issued because the Tenants did not provide a copy of their tenant insurance within 30 days of the beginning of the tenancy, contrary to a provision in the tenancy agreement. MM stated that this provision is a material term of the tenancy agreement.

The female Tenant NZ denied that the Tenant TH is a drug dealer. NZ stated that she did not receive the Landlord's warning letter dated August 25, 2015, and that she had no idea that there were allegations about drug dealing until she got the Notice dated August 26, 2015.

NZ stated that TH has a full-time job. She stated that he is involved in a Facebook group who do "bidding wars" and that the exchange may have been to do with the Facebook group.

NZ stated that she was late getting her insurance, but that she has it now and that the Landlord did not request a copy of the insurance.

Analysis

The onus is on the Landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the Notice(s) to end the tenancy.

The Notice dated August 26, 2015, discloses the following reason to end the tenancy:

Tenant has 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.

I find that the Landlord did not provide sufficient evidence of illegal activity on behalf of the male Tenant. The e-mail provided by the other occupant states:

"The guy came out of the building.(dealer) the other guy was pacing back and fourth (purchaser in front of building). He didn't say anything.

The guy who was pacing sat on the curve. The other came out. Walked by him. Pacing guy turned around looked that I was watching. He pstt at the guy (dealer) Guys sent around corner on river road then..... seen him return to building after about 2 minutes. Which was the photo I sent to you. Seen the other guy disperse west on river road."

[reproduced as written]

The author of the e-mail was not present to give oral testimony, or to be cross-examined by the Tenants. MM spoke of other occupants who also witnessed something occurring, but none of the other occupants were available to give oral testimony or be cross-examined. I find the written testimony of one of the occupants is too vague and lacks particulars. The photocopy of the photograph provided by the Landlord does not disclose any illegal activity. The alleged illegal event took place outside of the rental property and I find there is insufficient evidence that any activity took place that would adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord, or jeopardize a lawful right or interest of another occupant or the Landlord. Therefore, I find that the Notice issued August 26, 2015, is not a valid notice to end the tenancy and it is cancelled.

The Notice dated September 16, 2015, provides the following reason to end the tenancy:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The clause in the tenancy agreement provides that a Tenant must provide proof of insurance "at the request of the landlord". I find that the Landlord provided insufficient evidence that it made such a request of the Tenants.

I accept that the parties agreed that securing tenants' insurance within 30 days is a material term of the tenancy agreement. However, the Landlord did not provide sufficient evidence that the Tenant did not correct the breach within a reasonable time after **written notice to do so**. The Landlord provided a copy of e-mails between the Landlord and the tenant NZ, but this e-mail exchange does not include a demand from the Landlord that the Tenants provide a copy of their insurance, or a warning that the Tenants must provide such proof within a reasonable time. Therefore, I find that the Notice issued September 16, 2015, is not a valid notice to end the tenancy and it is cancelled.

The Landlord sought a monetary award for damages; however, the Landlord provided no proof of damages, or that such damages were caused by the Tenants, or proof of the amount required to repair the damages. This portion of the Landlord's Application is dismissed.

The tenancy is continuing and the security deposit and pet damage deposits must be administered in accordance with the provisions of the Act.

The Landlord's Application is dismissed and therefore I decline to award recovery of the filing fee. The Tenants were successful in their Application and I find that they are entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct **\$50.00** from future rent due to the Landlord.

Conclusion

The Landlord's Application is **dismissed in its entirety**.

The Tenants' Application is granted. **Both Notices to end the tenancy are cancelled. The tenancy will continue until it is ended in accordance with the provision of the Act.**

The Tenant may deduct **\$50.00** from future rent due to the Landlord, in recovery of the cost of the filing fee.

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: November 17, 2015

Residential Tenancy Branch

