



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPC, FF
TENANT: CNC

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlord filed seeking an Order of Possession and to recover the filing fee for this proceeding.

The Tenant filed seeking an Order to cancel the Notice to End Tenancy.

Service of the hearing documents by the Landlords to the Tenant were done by personal delivery on February 18, 2016, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by registered mail on February 10, 2016, in accordance with section 89 of the Act.

Both parties confirmed receiving the other parties Hearing Packages.

Issues to be Decided

Landlord:

1. Are the Landlords entitled to end the tenancy?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

The tenancy started on August 1, 2013 as a month to month tenancy. Rent is \$1,000.00 per month payable on the 1st day of each month. It should be noted the rent includes utilities. The Tenant paid a security deposit of \$500.00 on August 1, 2013. A move in condition inspection report was completed on August 1, 2013.

The Landlord said the Tenant is leaving the window and doors open in the rental unit which is causing the utility bills to be higher than they should be. The Landlord said that previous to this tenancy 6 persons lived in the rental unit and the hydro bills were around \$140.00/ month and now there is one person in the unit and the January, 2016 hydro bill was \$143.00. The Landlord continued to say that with the high utility bills the rental unit is not profitable and he has to subsidize the rental unit. The Landlord said he gave the Tenant's husband a letter on December 23, 2014 requesting the doors and windows be kept closed to reduce the utility costs. The Landlord said the Tenant has not complied with his request so he issued a 1 Month Notice to End Tenancy for Cause dated February 1, 2016 because he believes the Tenant has breached a material term of the tenancy agreement. The Landlord said he wants to end the tenancy.

The Tenant said keeping the doors and windows closed is not in the tenancy agreement. The Tenant continued to say she did have some of the windows open when her husband was alive due to a health condition that he had. The Tenant said that since her husband's death she has keeps the doors and window closed except for one window for her cats to go in and out and she opens windows when she is home to get fresh air. The Tenant said she was unaware of the Landlord's December 23, 2014 letter until she received the Landlord's hearing package in February, 2016. The Tenant continued to say that she has reduced hydro usage, but the cost of hydro has gone up which is part of the higher costs the Landlord is paying. The Tenant said the utilities are included in the rent and there is nothing in the tenancy agreement about the doors and window so the Tenant requested the Notice to End Tenancy for Cause be cancelled. The Tenant said she wants to continue the tenancy and she is will to work with the Landlord to reduce utility costs. The Tenant said the utility bills have already come down from when her husband was alive.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlords. The Landlords have included the utilities in the rent and now the Landlords believe the costs of the utilities is making the rental unit unprofitable. The

Landlords want to end the tenancy as a result. The Tenant said the reason the Landlords have given in the Notice to End Tenancy is a breach of the tenancy agreement, but doors or windows are not mentioned in the tenancy agreement and the Tenant believes she has the right to open windows and doors in a reasonable manner. The Tenant said the Landlords' reason to end the tenancy is not valid.

Analysis

Section 47 (h) of the Act says: A Landlord may issue a Notice to End Tenancy if the tenant:

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

A material term of a tenancy agreement must be in the tenancy agreement and must be a term that is so important that it could dictate whether a landlord or tenant would enter into the tenancy agreement. An example of a material term of a tenancy agreement is a non smoking clause. A person who smokes may not enter a tenancy agreement if smoking is not allowed and a landlord may not accept a tenant who smokes if the rental unit is a non smoking unit. The smoking clause is a material term because it is important to both parties to the extent that it would impact the decision to enter the tenancy agreement or not.

In this situation the opening and closing of doors and windows to control the utility costs is not in the tenancy agreement. I believe the issue the Landlord is concerned with is the utility costs resulting from the Tenant opening the doors and windows. The Landlord chose to include the utilities in the rent which makes the Landlord responsible for the cost of the utilities whatever the costs are. As the Landlord made no provision in the tenancy agreement for the costs of utilities the Landlord is not justified to end the tenancy based on the cost of the utilities. Consequently, I find that the Landlords' reason that the Tenant breached the tenancy agreement for opening doors and windows is not valid as there is no reference to utility costs or the use of doors and windows in the tenancy agreement. Further I find the Tenant has established grounds to show that there was no breach of the tenancy agreement and the Tenant is trying to work with the Landlord to reduce the costs of the utilities. Therefore I order the 1 Month Notice to End Tenancy for Cause dated February 1, 2016 to be cancelled and I order the tenancy to continue as agreed in the tenancy agreement.

As the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord by reducing the May, 2016 rent by \$100.00. The May, 2016 rent will be reduced from \$1,000.00 to \$900.00.

As the Landlord has not been successful in this matter I order the Landlord to bear the cost of the application of \$100.00 which the Landlord has already paid.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated February 1, 2016 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

The Tenant's May, 2016 rent is reduced to \$900.00.

The Landlord's application is dismissed without 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: March 22, 2016

Residential Tenancy Branch