



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, FF (Tenants' Application)
 OPC, MNSD, FF (Landlords' Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenant and the Landlords. The Tenant applied on June 14, 2016 to cancel a 2 month notice to end tenancy for the Landlords' use of the property and to recover the filing fee. The Tenant amended her Application on June 22, 2016 to cancel a 1 month notice to end tenancy for cause. The Landlords applied on June 27, 2016 for an Order of Possession based on the notice to end tenancy for cause and to recover their filing fee.

One of the Landlords and the Tenant appeared for the hearing and provided affirmed testimony during the hearing. The parties confirmed receipt of each other's Application, the Landlords' amended Application, and the parties' documentary and photographic evidence served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. While I have carefully considered all of the evidence before me, I have only documented that evidence which I relied upon to make findings in this decision.

Preliminary Issues

At the start of the hearing, the parties confirmed that the 2 month notice to end tenancy for the Landlord's use of the property dated June 9, 2016 had been rescinded and was now of no use and effect. Therefore, I dismissed the Tenant's Application to cancel the 2 month notice as this was withdrawn by the parties prior to this hearing.

The Landlords made an Application to keep the Tenant's security deposit. However, as the parties seek to deal with a notice to end tenancy for cause, I find the Landlord did not disclose a monetary claim for which the security deposit could be offset against.

Therefore, I find the Landlords' Application to keep the Tenant's security deposit is premature and must be dealt with after the tenancy ends in accordance with the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

- Should the notice to end tenancy for cause be cancelled?
- Are the Landlords entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this oral tenancy started on September 17, 2012 on a month to month basis. Rent is payable in the amount of \$1,050.00 on the fifth day of each month. The Tenant paid a security deposit of \$550.00 at the start of the tenancy. The parties confirmed that the Tenant is not in any rental arrears. The Tenant rents one of three homes (the "rental home") on the residential property with her mother and son. The three homes have 30 acres of land surrounding the three homes.

The Landlord testified that within approximately a year of the tenancy, the Tenant moved her father into the rental home without the Landlords' permission. The Landlord testified that during this time, the Tenant's father started to accumulate junk around the land that surrounds the residential homes.

The Landlord referred to photographic evidence which was recently taken before the notice to end tenancy was served to the Tenant. The photographs show an old blue truck, a boat, an old trailer, garbage around the rental house, garbage in bushes, old tyres, wood left in a pile to create a fire pit, and old vehicle car parts. In addition, the Landlord testified that the Tenant had caused damage to the rental unit door and had nailed up skulls on the vinyl siding of house causing damage.

The Landlord testified that they served the Tenant with a breach letter on June 13, 2016 in which they wrote that they are giving the Tenant up until June 20, 2016 to remove the above debris that has been scattered around the residential property. The Landlord testified that this junk has made their property look unsightly and is a safety concern with cars sitting on blocks. The Landlords write in the letter that they have previously spoken to the Tenant about this debris without any results or compliance. The breach letter was provided into evidence. The Landlord testified that despite this letter, the Tenant or her father have failed to remove this debris.

The Landlord testified they were served with a letter from their regional district about having multiple RV storage on the land in November 2015 as a result of complaints from

neighbours. The Landlord stated that she now fears that there will be complaints from neighbours about the junk deposited by the Tenant's father. The Landlord also testified that the Tenant's father is an unsavoury character who they do not want on their property. The Landlord testified that the Tenant has sublet the rental unit without the Landlords' written consent and has refused entry into the rental unit.

As a result, the Tenant was served with a 1 Month Notice to End Tenancy for Cause (the "Notice") on June 20, 2016 by posting it to the Tenant's door. The Notice was provided into evidence and shows a vacancy date of July 30, 2016. The reasons for ending the tenancy on the Notice are as follows:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord,
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and
 - put the Landlord's property at significant risk.
- Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant has assigned or sublet the rental unit without the Landlord's written consent.

In relation to the breach of the material term, the Landlord testified that the Tenant had a dog which was not permitted in the rental home and that the Tenant has failed to cut the lawns around the rental home.

The Tenant confirmed receipt of the breach letter dated June 13, 2016 and the Notice on June 20, 2016. The Tenant applied to dispute the Notice on June 22, 2016. The Tenant testified that her father moved into the rental unit in the spring of 2014. The Tenant confirmed that she did not inform the Landlords about this.

The Tenant testified that her father stayed with her approximately two to three months, after which she got into a dispute with him and asked him to leave the rental unit. The Tenant's father then moved in with a renter in the neighbouring home on the residential property. The Tenant testified that the junk does not belong to her but to her father who had placed it there during the course of his stay with the neighbouring renter and that it was not present during the time the Tenant's father was staying at the rental home with her. The Tenant stated that her father is no longer an occupant of her rental home and therefore she had no control of what she can tell him to do after he vacated it and moved in with the renter next door.

The Tenant testified that she has no tenancy agreement with the roommate who is simply there to help pay the rent. The Tenant testified that the roommate sleeps in the basement portion of the rental home but has access to and uses the entire rental unit. The Tenant confirmed that the boat belonged to her roommate and that this was insured and parked on the common property for use during the summer period which had never been restricted by the Landlord.

The Tenant explained that the male Landlord had exchanges with her father about the junk on the property whilst he was residing with the renter but is now seeking to evict the Tenant in an effort to get her father to vacate the renter's home. The Tenant explained that the Landlords were in the process of evicting the renter whom the Tenant's father is currently residing with. The Tenant provided the file number for a hearing that is due to take place to hear that matter. The Tenant testified that the renter has decided to vacate the house she lives in with her father and therefore, her father will be leaving soon and removing all of his junk from the residential property. The Tenant testified that the Landlord knew that she had a dog and took no action against her or served her with a breach letter regarding this. In relation to the damage alleged by the Landlord from the skulls, the Tenant explained that there was no damage to the vinyl siding and that the damage to the door was not damage but painting marks which are removable.

The Tenant testified that the garbage in the bags at the side of the rental unit was a can collection project stored there for a small amount of time by her son which has since been removed. The Tenant also confirmed that the fire pit is now also gone. The Tenant testified that the letter from the regional district was in relation to excessive RV storage by the Landlord and not the Tenant. The Tenant stated that she refused the Landlord's entry into the rental home as they had not given her proper notice detailing the date and time of the entry as is required by the Act.

The Landlord disputed the Tenant's testimony that the Tenant's father started accumulating debris on the property after he had moved to the attached renter's dwelling. The Landlord submitted that the Tenant's father had started to accumulate this property when it came to their attention that he was living with the Tenant and then this continued when the Tenant's father vacated and moved to the attached dwelling with the renter. The Landlord was unable to provide the specific time it came to their attention that the Tenant's father was residing at the rental home and when he had vacated it. The Landlord testified that the Tenant failed to take responsibility for her father's actions and without the Tenant allowing her father to be there in the first place,

this would have prevented all of the problems. The Landlord did acknowledge that the letter from the regional district was in relation to the Landlords' RV storage.

The Tenant stated that the Landlords are trying to evict her as a means of getting her father to remove the junk from their property and this is why they were initially provided with a 2 month notice to end tenancy for Landlord's use of the property.

Analysis

In relation to the form and content of the Notice, I find it complied with the requirements of Section 52 of the Act and that it was served to the Tenant pursuant to Section 88(g) of the Act on June 20, 2016. The Tenants confirmed receipt of the Notice on the same day. Therefore, I find that the Tenant made the Application, on June 22, 2016, to dispute the Notice within the ten day time limit stipulated by Section 47(4) of the Act.

When a landlord issues a tenant with a Notice and it is then subsequently disputed, the landlord bears the burden of proving the reasons on the balance of probabilities. Therefore, I must determine if the Landlord has met the burden by providing sufficient evidence to prove the reasons elected on the Notice.

I first turn my mind to the reason on the Notice that the Tenant breached a material term of the tenancy agreement. In this respect, this reason can only be upheld if there is a written tenancy agreement that contains a material term that has been breached by the Tenant. Therefore, as this is an oral tenancy and there exists no tenancy agreement between the parties, this reason cannot be used to end the tenancy. Furthermore, the Landlord alleges that the Tenant has a dog without the Landlord's permission and has not cut the grass. In this respect, there is no agreement between the parties that stipulates these requirements and prohibitions and neither are there any breach letters that have been served to the Tenant for these alleged infractions. Therefore, I cancel this reason on the Landlords' Notice.

Secondly, with respect to the Landlord's allegation that the Tenant has sublet the rental unit, I turn my mind to Policy Guideline 19 on Assignment and Sublet. This guideline provides extensive detail on when a party has considered to have sublet the rental unit. In this case, I find the Tenant did not sublet the rental unit, but rather has a roommate relationship with the purpose of helping the Tenant to pay rent. This is because there is no tenancy agreement between the tenant and the roommate and the roommate still retains access to the entire rental home rather than being bound and restricted to a particular part of the rental house. Furthermore, there is no evidence before me that the Tenant has not moved out of the rental home and provided it as a sublet to the

roommate. Therefore, I am only able to conclude on the evidence before me that the Tenant has not sublet the rental unit. Rather, the Tenant has a roommate who has no rights under the Act.

Lastly, I turn my mind to the remaining reasons on the Notice. In this respect, I am only able to find that the Landlords have failed to show that during the specific time the Tenant's father was staying at the **rental home** in spring 2014, that the Tenant's father started to accumulate the junk/debris on the residential property. I am unable to determine this issue from the evidence before me and I find that it is equally likely that the Tenant's father started to accumulate the debris on the property when he continued to remain on the residential property under the control of neighbouring renter and not the Tenant.

I make the above finding based on the following reasons. The Landlord asserted that the Tenant's father had accumulated the debris in the specific time period he was staying with the Tenant. If this had been the case, then the Landlord would have known of the date the Tenant's father had moved in and out of the rental unit, which she was unable to provide evidence of during the hearing.

Furthermore, if it had come to the Landlord's attention that the Tenant's father was dumping debris on the residential property and that this had caused a serious safety concern to the Landlord which she detailed in the June 2016 breach letter, then I am confused as to why the Landlord did not serve the Tenant with a breach letter in 2014 when the alleged accumulation of the junk started to occur, or why the Landlord did not serve the Tenant with a Notice at that point. In addition, I find it odd that the Landlords allowed the issue of the debris accumulation to go on for approximately two years without issuing the Tenant with a breach letter and then gave the Tenant a breach letter in June 2016 giving seven days for the same issues to be corrected. I find the Landlords had a duty to take the matter up with the renter who continued to allow the Tenant's father on the property in the same manner that it should have been addressed with the Tenant when the Tenant's father was residing with her. I find the lack of diligent and consistent action by the Landlords does not convince me that this was an urgent safety matter and serious in nature. In addition, the letter from the regional district is dated November 2015 which I find does not relate to accumulated debris on the property but to a different issue unrelated to the Tenant. I find there is insufficient evidence before me that the Landlords have been put on notice by the regional district of unsightly debris as stated in the Landlord's breach letter of June 2016.

I find the Tenant's assertion that the Landlords are trying to evict her without cause has merit. This is because before the Notice had been served to the Tenant the Landlord

attempted to end the tenancy with a different notice to end tenancy which had nothing to do with cause. In relation to the alleged damage to the front door and the skull heads on the rental home, I find that the one photograph relating to each of these items is not sufficient evidence of actual damage that has occurred or damage that is significant in nature. In any case, the Tenant has a duty to leave the rental home at the end of the tenancy undamaged. In relation to the Tenant preventing the Landlord from entering the rental unit, the Tenant has a right to do this if the Landlord has not provided proper written legal notice of the entry pursuant to Section 29 of the Act. This requires a landlord to provide written notice of the date and time of the entry and to allow 24 hours before the entry takes place after a tenant has been put on notice of the entry. There is insufficient evidence before me that the Landlords complied with the Act in this manner and that the Tenant subsequently breached the Act by refusing entry.

Conclusion

Based on the foregoing, I find the Landlords have provided insufficient evidence to prove the reasons on the Notice. Therefore, I grant the Tenant's Application to cancel the Notice and deny the Landlords' request for an Order of Possession. The tenancy will continue until it is ended in accordance with the Act. As the Tenant has been successful in cancelling the Notice, the Tenant may recover her \$100.00 filing fee. Pursuant to Section 72(2) (a) of the Act, the Tenant may achieve this relief by making a \$100.00 deduction from a next installment of rent. The Tenant may want to attach a copy of this decision when making the reduced rent payment. The Landlords' Application to recover their 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 Act.

Dated: July 21, 2016

Residential Tenancy Branch