



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") to cancel a 1 Month Notice to End Tenancy for Cause pursuant to section 47; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave evidence that the residential tenancy agreement began on February 1, 2014 as a 2 year fixed term. A copy of the residential tenancy agreement was submitted as evidence for this hearing. The rental amount for this unit was established at \$1800.00 and later reduced to \$1750.00 payable on the first of each month. The landlord testified that s/he continues to hold the \$875.00 security deposit paid by the tenant on January 9, 2014.

The landlord issued a 1 Month Notice to End Tenancy for Cause. The landlord testified that the tenant caused extraordinary damage to the property by pruning and trimming several trees on the property. The tenant applied within the time frame to cancel the notice to end tenancy. The landlord sought a 2 day order of possession if the tenants were unsuccessful in their application to cancel the notice to end tenancy.

A binder of materials with photographic and documentary evidence was submitted for this hearing. As well as the 1 Month Notice to End Tenancy, photographs of the trees

and the interior of the residential premises were submitted. The tenants testified that the rental unit, a detached home on a large property is their family home and they do not wish to end the tenancy.

The landlord testified extensively with respect to the sentimental and environmental value of the trees that were trimmed on the property. He provided testimony with respect to the protected nature of some of the trees and indicated that he has owned this residence for many years. He testified that he was extremely disappointed by the actions of the tenants in trimming and pruning the trees on the property without his permission.

The tenants submitted that the trees needed to be trimmed and further submitted that the unauthorized tree-trimming is not grounds to end their long term, fixed term tenancy.

Analysis

Based on the landlord's undisputed evidence, I am not satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant has made application pursuant to section 47(4) of the Act within ten days of receiving the 1 Month Notice. When a tenant applies to cancel a notice to end tenancy, the burden of proof shifts to the landlord to justify the notice that he has issued.

In this case, the landlord relies on the ground that the tenant(s) has caused extraordinary damage to the unit or property to end the tenancy. Based on the evidence submitted, I find that the tenants have not caused extraordinary damage to the unit or property.

While I do not doubt that the landlord was very upset and alarmed by the fact that the tenants trimmed his trees without his approval, I find that these actions do not amount to extraordinary damage under the *Act*. Extraordinary damage is defined as unusual or remarkable. It refers to something out of the ordinary. Under the *Act* and Residential Tenancy Policy Guidelines including Guideline No. 16, damages are assessed by their impact like disruption of some kind or a loss, including financial loss. In this case, the actions by the tenants resulted in a decrease of the landlord's satisfaction with his property however I find that any damage to the property is minimal.

The landlord must prove to a balance of probabilities that the tenants caused **extraordinary damage** to the rental unit. The landlord did not present sufficient evidence to suggest that the trees that were trimmed are irreversibly damaged in an extensive or potentially dangerous manner. I find that the landlord has not shown

that, on a balance of probabilities, the tenants caused extraordinary damage to the landlord's property warranting the end of the tenancy.

I grant the tenant's application to cancel the notice to end tenancy. Based on the success in their application, I find the tenants are entitled to recover the filing fee for this application.

For the future reference of both parties, I provide this information in the form of the Residential Tenancy Branch's Policy Guideline No. 1 regarding the obligations to the property by the landlord and by the tenant...

This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

PROPERTY MAINTENANCE

- 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.**
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

With respect to the tenant's application to be addressed at this hearing, and based on the evidence before me, I find that the landlord has not shown sufficient grounds to validate the 1 Month Notice and obtain an end to this tenancy for cause. The tenant's application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice is successful. The 1 Month Notice is cancelled.

Conclusion

I grant the tenant's application to cancel the 1 Month Notice. The tenancy shall continue.

The tenant is entitled to reduce their next month's rent by \$100.00 in order to recover the filing fee for this application.

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: August 9, 2016

Residential Tenancy Branch