



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 8, 2016. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on December 19, 2015 as a month to month tenancy. Rent is \$600.00 per month payable in advance of the 1st day of each month. The Tenant did not pay a security deposit. No tenancy agreement and no move in condition inspection report were completed at the start of the tenancy.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated June 27, 2016 by personal delivery on June 27, 2016. The Effective Vacancy Date on the Notice is August 1, 2016. The Tenant is living in the unit and the Landlord said she wants to end the tenancy.

The Landlord said the reason on the 1 Month Notice to End Tenancy is that the Tenant has not completed repairs to damage that the Tenant has caused to the unit, site or property in a reasonable time period. The Landlord said there were three incidents and they are as follows:

- 1). The Tenant damaged an eaves trough gutter on move in and did not repair it for a couple of months.
- 2). The Tenant dismantled the pump in the pump house to convert the pump house into a chicken coop.
- 3). The Tenant has not maintained the yard as required by the tenancy agreement.

The Landlord said she requested the Tenant to repair the gutter and pump and told the Tenant at the start of the tenancy the yard was her responsibility to maintain. The Landlord continued to say the gutter is repaired, but the pump does not work and the Landlord just cut the grass and cleaned the yard up. The Landlord said she has cause to end the tenancy and the Landlord requested an Order of Possession.

The Tenant said she repaired the gutter and has supplied photographs to proof it has been done. As well the Tenant said she submitted photographs to show the pump house is clean and the pump has been reassembled although there is no electricity to the pump so the Tenant said she has no idea if it works or not. The Tenant said she has not used the pump during the tenancy and she believes there was no electricity available for the pump at the start of the tenancy.

The Landlord said the pump worked at the start of the tenancy.

Further the Tenant said the Landlord said they would supply a lawn mower and a weed eater so that he Tenant could maintain the yard. The Tenant said she submitted emails showing the Landlord did not do this because as the Landlord said "things have changed". The Tenant said she purchased a lawn mower and borrowed a weed eater and she has been maintaining the yard as best as she can.

The Landlord said they did offer the Tenant a push lawn mower but she refused it.

The Tenant said she purchased a lawn mower and used it.

The Tenant said in closing that she has maintained the yard with her own equipment and she has repaired the gutter and pump to the same condition as it was at the start of the tenancy so the Landlord has no cause to evict her.

The Landlord agreed the gutter was repaired and the pump was rebuilt but the Landlord does not know if the pump will work as there is no electricity hooked up to it. Further the Landlord said they would not be cutting the grass and doing yard maintenance if the Tenant had done it. The Landlord said the Tenant did not repair the gutter and pump in a timely manner and the Tenant is not doing the yard work as agreed. The Landlord requested an Order of Possession.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. Consequently the parties will abide by the following decision. In Section 47 (g) of the Act states a tenant must repair damage to a rental unit within a reasonable period of time. A reasonable period of time is based on when a formal request is made and how serious the damage is. For example if the damage is not causing any additional damage and is not causing operational issues for the rental unit then a reasonable time period would be longer than a for damage to more critical items in a rental unit. As well formal notice to repair damage can be given in writing or by

issuing a Notice like a 1 Month Notice to End Tenancy for Cause. In this case the formal notice was given by the 1 Month Notice to End Tenancy for Cause dated June 27, 2016. The Tenant said the repairs were completed by the middle of July, 2016; therefore I find the Tenant did complete the gutter repairs and pump rebuild in a reasonable time period. The issue of whether the pump is operable is unclear as there is no electricity connected to the pump and no move in condition inspection report was completed so whether the pump worked at the start of the tenancy or not is unknown.

With regard to the yard maintenance it is apparent that the Tenant has done some yard maintenance with her own equipment and as the Landlord did not supply the yard equipment as promised at the start of the tenancy; I find the Landlord has not established grounds to prove the tenancy should end based on the issue of yard maintenance.

Consequently I find that the Tenant has established grounds to receive an order to cancel the 1 Month Notice to End Tenancy for Cause dated June 27, 2016. Further I order the tenancy to continue as agreed.

As the Tenant has been successful in this matter I order the Tenant to recover the \$100.00 filing fee for this proceeding by deducting it from the next month's rent. The next month's rent is adjusted to \$500.00.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated June 27, 2016 is cancelled and the tenancy is ordered to continue as set out in the verbal tenancy agreement.

The next month's rent payment is adjusted to \$500.00 so that the Tenant can recover the filing fee of \$100.00 for this proceeding from the Landlord.

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 22, 2016

Residential Tenancy Branch