



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC, O

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution.

On July 22, 2016 the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement and for "other". On July 25, 2016 the Tenant amended the Application for Dispute Resolution to include an application to set aside a Notice to End Tenancy for Cause.

The Tenant stated that on July 26, 2016 the amended Application for Dispute Resolution, the Notice of Hearing, and four letters the Tenant submitted with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On August 15, 2016 the Tenant submitted 33 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on August 15, 2016. The Landlord acknowledged receipt of this evidence. He stated that he has had sufficient time to consider the documents and they were accepted as evidence for these proceedings.

The Landlord stated that on August 26, 2016 he submitted 8 pages of evidence plus photographs to the Residential Tenancy Branch. He stated that the delay in submitting this evidence was due to the fact that he did not receive the bulk of the Tenant's evidence until sometime after August 15, 2016.

The Landlord stated that on August 27, 2016 he posted his 8 pages of evidence on the door of the Tenant's rental unit. He stated that he posted that evidence with an Application for Dispute Resolution he recently filed, in which he applied for an Order of Possession on the basis of the One Month Notice to End Tenancy that is the subject of these proceedings. He stated that he intended the 8 pages of evidence to serve as evidence for these proceedings as well as evidence in support of his Application for Dispute Resolution.

The Tenant stated that she received the Landlord's evidence and that she is able to refer to it during this hearing. The Tenant argued that the evidence should not be considered during these proceedings as they were served as evidence for a separate Application for Dispute Resolution.

The Landlord and the Tenant were advised that I was not in possession of the evidence the Landlord submitted on August 27, 2016. The Landlord was given the opportunity to resubmit his evidence package by August 30, 2016. The Landlord stated that he will re-submit his evidence package on August 30, 2016. The parties were advised that I would reserve judgment on whether or not that evidence package would be considered during these proceedings.

I waited until September 06, 2016 to render my decision in this matter. As the Landlord had not resubmitted his evidence to the Residential Tenancy Branch by September 06, 2016 I was unable to consider any evidence from the Landlord. As this dispute relates to the continued possession of the rental unit, I find the Tenant has the right to a timely adjudication and I find it reasonable to conclude this matter without waiting any longer for the Landlord's evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me. At the start of the hearing the Landlord indicated that he wished to call a witness. At the conclusion of the hearing the Landlord stated that he no longer considered it necessary to call his witness.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Is there a need to issue an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on February 01, 2015;
- the Tenant agreed to pay monthly rent of \$600.00 by the first day of each month;
- the rental unit is a single family dwelling;
- on July 24, 2016 a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit, which declared that the Tenant must vacate the rental unit by September 09, 2016;
- the One Month Notice to End Tenancy declared that the Landlord wished to end the tenancy because the Tenant has not done required repairs of damage to the unit/site and non-compliance with an order under the legislation within thirty days after the tenant received the order or the date in the order; and;
- the Tenant has not received an order from the Residential Tenancy Branch or any other legislative body in regards to this tenancy.

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant erected a small green house on her deck. The parties agree that the Landlord served the Tenant with written notice, dated July 18, 2016, to remove the green house within 72 hours. The Landlord stated that he wanted the greenhouse removed to prevent the deck from being damaged by watering. The parties agree that the green house was removed by August 01, 2016.

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant erected a portable garage. The parties agree that the Landlord served the Tenant with written notice, dated July 18, 2016, to remove the portable garage within 72 hours. The parties agree that the portable garage has not been removed.

The Landlord stated that he wants the portable garage removed, in part, because it is damaging the lawn. The Tenant stated that the garage is in an area covered with weeds and grass, but she does not consider it a lawn.

The Landlord stated that he wants the garage removed, in part, because it is damaging the lawn. The Tenant stated that the garage is in an area covered with weeds, rocks, and grass, but she does not consider it a lawn.

The Landlord stated that he wants the portable garage removed, in part, because he thinks it is unsightly.

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant had two large containers of seaweed fertilizer on the property, which had a foul odour. The parties agree that the Landlord served the Tenant with written notice, dated July 18, 2016, to remove and dispose of the containers within 24 hours.

The Tenant and the Landlord agree that the seaweed fertilizer has been removed from the wading pool and garbage can containing the fertilizer has been covered.

The Tenant stated that a faint odour can be detected when standing near the garbage can. The Landlord stated that an odour can still be detected from 25 feet away from the garbage can. The Landlord stated that he has received no complaints about the odour since the garbage can was covered.

The Landlord and the Tenant agree that the Landlord served the Tenant with written notice, dated July 18, 2016, in which he informed the Tenant that the garden area behind the rental unit "will no longer be included in rental of said property", effective October 01, 2016. Upon being advised that the Tenant would be entitled to a rent reduction if the Landlord restricted her use of property originally provided with the rental unit, the Landlord stated that he was withdrawing his notice that the Tenant could not use this garden area.

The Landlord and the Tenant agree that the Landlord has directed the Tenant, in writing, not to water plants on the covered area of the deck. The Tenant finds this to be unreasonable, in part, because the roof over the covered area leaks and, in part, because her plants have containers under the pots to collect the water.

The Tenant stated that the photographs she submitted in evidence were taken on August 11, 2016. She stated that the photographs submitted in evidence by the Landlord (which I have not viewed) were taken in June of 2016, before she cleaned up the residential property.

The Landlord stated that his photographs were taken on July 18, 2016, July 19, 2016, and July 20, 2016.

Analysis

Section 47(1)(l) of the *Act* authorizes a landlord to end a tenancy if a tenant has not complied with an order of the director within 30 days of the later of the date the tenant receives the order or the date specified in the order for the tenant to comply with the order.

Although the Landlord has indicated his intent to end the tenancy in accordance with section 47(1)(l) of the *Act*, I find that he does not have the right to do so. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant has not received an order from the Residential Tenancy Branch in regards to this tenancy.

Section 47(1)(g) of the *Act* authorizes a landlord to end a tenancy if a tenant does not repair damage to the rental unit or other residential property as required by section 32 of the *Act*. The Landlord has indicated his intent to end the tenancy in accordance with section 47(1)(g) of the *Act*.

In the absence of any evidence to show that the green house has damaged the deck, I find that the Landlord does not have grounds to end this tenancy in accordance with section 47(1)(g) of the *Act*. I find that to be particularly true in these circumstances, as the Tenant has complied with the Landlord's written request to remove the green house from the deck and, in doing so, has effectively prevented the green house from damaging the deck.

I find that the Landlord has submitted insufficient evidence to establish that the temporary garage has damaged the yard of the rental unit. In reaching this conclusion I was influenced by the photographs submitted in evidence by the Tenant. In my view these photographs show that the yard is not in particularly good condition and I cannot, therefore, conclude that the portable garage is causing any significant damage.

Section 47(1)(g) of the *Act* authorizes a landlord to end a tenancy if the tenant does not repair damage to the residential property. It does not authorize a landlord to end a tenancy for aesthetic reasons. I therefore find that the Landlord does not have the right to end this tenancy, pursuant to section 47(g) of the *Act*, because he believes the portable garage is unsightly or because there is odor from fertilizer being stored in a garbage can.

I find that the Landlord has submitted insufficient evidence to establish that he has grounds to end this tenancy pursuant to section 47(1)(g) or 47(1)(l)(d)(i) of the *Act*. I therefore grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause that is the subject of this dispute.

As the Landlord withdrew his notice that the Tenant could not use the garden area behind her rental unit, I find there is no reason for me to issue any orders in that regard. Both parties are advised that, pursuant to section 27(2) of the *Act*, a landlord has the right to terminate or restrict a non-material term of the tenancy agreement, providing:

- the landlord gives 30 days written notice of the termination or restriction; and
- the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service of facility.

In the absence of evidence that indicates the tenancy agreement specified that the Tenant could not water plants on her exterior deck, I find that the Landlord does not have the right to impose that restriction on the Tenant. The Tenant retains the right to water plants on her deck. The

Tenant has an obligation to protect the deck from being damaged by water and to repair damage that may result from watering her plants.

Conclusion

The One Month Notice to End Tenancy for Cause, dated July 24, 2016, has been set aside. This tenancy shall continue until it is end in accordance with the *Act*.

I understand that the Landlord has applied for an Order of Possession on the basis of this One Month Notice to End Tenancy, which is scheduled to be heard at a future dispute resolution proceeding. Unless the Application for Dispute Resolution is for something other than an Order of Possession, the Landlord may wish to cancel that Application for Dispute Resolution. In the event the Landlord does not cancel his Application for Dispute Resolution, both parties are directed to bring this decision to the attention of the Arbitrator presiding over that matter.

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: September 06, 2016

Residential Tenancy Branch