Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPC, MND, MNR, MNSD, FF
Tenants: CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference originally on September 2, 2016 and was attended by the female landlord; the tenant and his advocate. The hearing was adjourned to September 13, 2016 and reconvened via teleconference and was attended by both landlords; the tenant and his advocate.

The original hearing was to adjudicate the tenants' Application to dispute a 1 Month Notice to End Tenancy for Cause issued by the landlord July 3, 2016 and the landlords' Application seeking an order of possession based on a 1 Month Notice issued on July 18, 2016 and a monetary claim by the landlord.

As per my interim decision dated September 6, 2016, I ordered this hearing be reconvened and include the tenant's second Application which was to seek to cancel the 1 Month Notice to End Tenancy for Cause issued on July 18, 2016 that had been scheduled to be heard on September 13, 2016.

Also as per my interim decision I ordered that the landlords' Application was amended to exclude their monetary claim. As a result this decision deals only with the issues of possession raised in both 1 Month Notices to End Tenancy for Cause issued by the landlord on July 3, 2016 and July 18, 2016.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel 2 - 1 Month Notices to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act).*

It must also be decided if the landlords are entitled to an order of possession for cause and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Act.*

Background and Evidence

The parties submitted the following relevant documents:

- A copy of a tenancy agreement signed by the parties on May 3, 2013 for a month to month tenancy beginning on May 1, 2013 for the monthly rent of $1,000.00 due on the 1st of each month;
- A copy of a previous Dispute Resolution Decision issued on June 3, 2016 ordering the tenant to pay the landlord a pet damage deposit of $500.00 no later than July 3, 2016;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on July 3, 2016 with an effective vacancy date of August 3, 2016 citing non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order; and

- A copy of a 1 Month Notice to End Tenancy for Cause issued on July 18, 2016 with an effective vacancy date of August 18, 2016 citing the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, the tenant has not done required repairs of damage to the unit; and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The parties agreed the tenants were ordered to provide the landlords with a pet damage deposit by July 3, 2016 as per the above noted decision dated June 3, 2016. The landlord submitted that tenants failed to pay the deposit by July 3, 2016 and as a result she served the tenants with the first 1 Month Notice to End Tenancy for Cause on that date.

The tenants submitted a notarized statement saying that they attempted to pay the landlord with their pet damage deposit on July 3, 2016 and that the landlord refused to accept the payment. The tenants submitted that on 3 other occasions (July 4, 2016; July 8, 2016; and July 11, 2016) they attempted to pay the landlords. They submitted that on July 18, 2016 the landlord returned the money order that the tenants had sent to the landlords by registered mail on July 11, 2016.

The landlord confirmed that when the tenants had not paid the deposit on July 3, 2016 as was required by the previous order she issued the Notice and determined that since the tenants had not complied with the order there was no longer a need to accept the deposit payment.

In regard to the 1 Month Notice to End Tenancy for Cause issued on July 18, 2016 the landlord submitted that the tenants breached a material term of the tenancy when they started conducting a business in the rental unit and when they obtained a pet. I note the tenancy agreement has no specific clauses or terms that prohibit the tenants from having a pet or running a business out of the rental unit.

The landlords submitted that the tenants have been operating a business in the rental unit of transmitting radio broadcasts. The landlords stated that as a result of running a business their insurance would not be valid should any damage to the property occur that would normally be covered by insurance. The landlords provided no supporting documentary evidence from their insurance provider that their insurance has been or would be discontinued for any reason.

The landlords also allege that the tenants are engaged in illegal activity when they operate the radio transmission. In support of this position the landlord has submitted print-outs indicating that the male tenant had been charged with installing, operating, possessing a prohibited radio apparatus on two separate occasions since they have been in the rental unit.

The male tenant stated that he does not operate a business. The tenants submitted a copy of a Certificate of Incorporation, pursuant to the Society Act, for a local community radio society. He stated he originally was broadcasting as an internet radio but later purchased the transmitter.

The tenant explained that unbeknownst to him the transmitter he purchased, which does not require a license to operate, was working in a manner that was not allowed and he reached a plea arrangement in regard to the above noted charges where he paid a fine. The tenant stated that they are no longer broadcasting using the transmitter and have reverted to being an internet radio.

The landlord submitted that because of the equipment in the unit for the radio transmitter the tenant has put holes in the walls to run cords. The tenant acknowledges putting one hole in the wall but that there were at least 3 holes in the walls at the start of the tenancy. A Condition Inspection Report was submitted into evidence recording the condition at the start of the tenancy agreed to by both parties.

I note the Report records at least 2 small holes in the bathroom ceiling; a number of scuffs and marks on various walls throughout the rental unit; a bucket under the kitchen sink for leaks; cigarette burns on the

carpet; a dirty oven; a number of window and sliding door tracks were dirty; and the blinds in some rooms were bent

The landlords submitted copies of two letters sent to the tenant. One letter was dated June 13, 2016 and the 2nd was dated July 14, 2016. In the June 13, 2016 letter the landlords outlined that the tenant needed to complete the following tasks before July 13, 2016:

- Repair a deep cut in the linoleum;
- Repair of an "unauthourized" hole in the wall between two rooms;
- Removal of stacks of cardboard and other clutter from the back patio;
- Removal of too much cardboard and clutter from the pantry;
- Removal of tape from the blinds and if there is damage to the blinds they must be repaired or replaced; and
- Cleaning. Specifically the landlord identified an issue with cobwebs; track pads of sliding doors and windows with dirt/dust "caked on".

On July 14, 2016 the landlords wrote another letter to the tenants reminding them of the tasks required outlined in the letter of June 13, 2016 that must be completed prior to an inspection on July 15, 2016 at 5:00 p.m. In this letter the landlords also informed the tenants that they expected the tenants to stop "all radio station activities" no later than the time of the inspection on July 15, 2016.

The landlords submitted two photographs in support of their position. One photograph is of the exterior of the property showing a number of items stored on the property and the second photograph shows one hole in a wall with some cords going through the hole.

The tenant submitted into evidence a written statement from a Certified Concrete Technician. The statement states that the split in the linoleum flooring was not caused by a human action or a cutting of the linoleum. He states that the crack in the linoleum was caused by the concrete flooring underneath that is spalling.

The male tenant testified that there were already at least 3 holes in the walls at the start of the tenancy including ones that the previous tenant had made to install a satellite dish. The tenant acknowledges that he has not completed these repairs but will do so when he moves out of the rental unit.

He further stated that the mattress from the patio and the cardboard boxes were removed in early July and the patio was tidied up on July 8, 2016. He stated that he had removed the tapes from the blinds.

The male tenant also submits that in regard to the landlords' request to clean the unit he has the unit in a much cleaner condition than it was at the start of the tenancy. He states that he has kept this rental unit the cleanest he has ever kept any of his homes.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant has not complied with an order of the director within 30 days of the later of the following dates:

i. The date the tenant receives the order; or
ii. The date specified in the order for the tenant to comply with the order.

As the tenants were ordered, by a Residential Tenancy Branch Arbitrator to pay the landlords the pet damage deposit by July 3, 2016, in order to end the tenancy for failure to do so, under Section 47, the landlords must wait 30 days past the date they were ordered to have paid it to meet the requirement noted above.

Despite the landlords' issuance of the 1 Month Notice to End Tenancy for Cause on July 3, 2016 I find the tenants had the full day to pay the amount ordered. In addition, I find the landlords did not take into account the requirement to allow an additional 30 days if they wanted to end the tenancy for failing to comply with an order.

As a result, I find that the 1 Month Notice to End Tenancy for Cause issued on July 3, 2016 was issued prematurely. As such, I order that this Notice is cancelled and is of no force or effect.

I also order that since the landlords have subsequently refused to accept payment of the pet damage deposit despite the tenants' multiple attempts within the 30 days after July 3, 2016 I find the landlords are estopped from issuing a new 1 Month Notice for failing to comply with the order granted in the June 3, 2016 decision.

Section 47 of the *Act* also allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- The tenant does not repair damage to the rental unit, as required under section 32 (3) of the *Act*, within a reasonable time; or
- The tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

I am not satisfied from the landlords' submissions that the tenants have put the landlords' property at **significant** risk. From the landlords' testimony and photographic evidence I find that some of the tenants' activities may cause some minor and easily repairable damage but there is no damage or risks that appear to be significant.

Despite the landlords' submissions I find the landlords have failed to provide any evidence that their insurance for the property is at any risk due to the activities of the tenants through their radio broadcasting.

As such, I find the landlords cannot rely on the cause that the tenants have put the property at significant risk to end the tenancy.

In relation to the landlords' assertions that the tenants have been engaged in illegal activity that has or is likely to cause damage to the landlord's property, I find the fact that the activity may or may not be legal is not relevant because the landlords have provided no evidence to substantiate damage of any consequence has been caused as a result of this activity.

Therefore, I find the landlords cannot rely on the cause that the tenants have engaged in illegal activity that has or is likely to cause damage to end the tenancy.

Residential Tenancy Policy Guideline # 8 defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, an arbitrator will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

In their submissions the landlords indicate the material terms that were breached were the tenant having pets and the tenant running a business in the rental unit. As there are no terms specifically identified in the tenancy agreement that prohibit either activity identified, I find there is no evidence that the parties ever agreed on any such prohibitions let alone that these terms should be considered material to the tenancy.

As a result, I find the landlords cannot rely on breach of a material term of the tenancy agreement to end this tenancy.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

As the burden rests with the landlords, in the case before me, to provide sufficient evidence to establish they have cause to end the tenancy in regard to their request for cleaning and repairs, I find that where the tenants have provided a plausible explanation as to the completion of the requests the landlords are required to provide additional evidence to corroborate their position that the tenants have failed to do so.

I note that in response to all of the requirements set out in the landlords' letters of June 13, 2016 and July 14, 2016 the tenants submitted that they have either dealt with the issue or have provided a reason why they may not have dealt with some.

In regard to the split linoleum, I find the tenants have provided a plausible explanation that the split was not caused by them. I find the landlords have provided no response to this explanation or other confirmation that the split was caused by the tenants.

I also find that despite the tenant's testimony that he had completed the mattress and cardboard box removal; the removal of tape from the blinds; as well as tiding up the patio the landlords have provided no corroborating evidence that this work was not completed.

While I find that there is no evidence before me that would confirm that there were multiple holes in the walls, at the start of the tenancy, as described by the tenants and the tenants have acknowledged that the repairs have not been made, I find that these repairs are of such minor significance that failure to complete them as per the landlords' request is not sufficiently significant to end the tenancy. I caution the tenants however, that should they fail to completed these repairs by the end of the tenancy the landlord may seek monetary compensation.

And finally, in regard to the cleaning of the rental unit, in particular, the landlords request to have the track pads of sliding doors and windows have dirt and dust "caked on", I find the Condition Inspection Report indicates that these tracks were dirty at the start of the tenancy. As the landlords did not consider this a problem when they provided the rental unit to the tenants at the start of the tenancy I find they are estopped from using this as a cause to end the tenancy.

As a result of these considerations, I find the landlords cannot rely on failing to complete the repairs and or cleaning as a cause to end the tenancy.

Conclusion

Based on the above I find the landlords have failed to establish cause to end the tenancy as purported in either of the 1 Month Notices to End Tenancy for Cause issued on July 3, 2016 or July 18, 2016.

As a result, I dismiss the landlords' Application for Dispute Resolution in its entirety and order that the tenancy remains in full force and effect.

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 16, 2016

Residential Tenancy Branch