



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, ERP, RP, PSF, LRE, FF

Introduction

The tenants apply to cancel a one month Notice to End Tenancy dated and received July 28, 2016.

The Notice claims that the tenants or a person permitted on the premises by them have:
a) significantly interfered with or unreasonably disturbed another occupant or the landlord, b) seriously jeopardized the health or safety or lawful right or interest of another occupant or the landlord, and or c) put the landlord's property at significant risk.

The Notice also claims that the tenants have engaged in illegal activity that has, or is likely to, a) adversely affect the quiet enjoyment, security, safety of physical well-being of another occupant, and or b) jeopardize a lawful right or interest of another occupant or the landlord.

In addition, the Notice claims that the tenants have caused extraordinary damage to the rental unit or property and that they have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Proof of any of these claims provides a lawful basis for a tenant's eviction under s. 47 of the *Residential Tenancy Act*.

The tenants also apply for a compliance order, and order for repairs and emergency repairs, and order that the landlord provide a service or facility and to suspend or set conditions on the landlord's right of entry.

The tenants seek recovery of the filing fee but it is apparent they did not pay a filing fee.

The central issue and the claim leading to an immediate hearing of this matter is the question of the validity of the Notice to End Tenancy. Due to the lack of available hearing time, I exercised the discretion granted by the Rules of Procedure and confined the hearing to that issue. The remainder of the tenants' claim I find to be unrelated to the central issue and it was and is dismissed with leave to reapply.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that there are grounds justifying the ending of this tenancy under any of the grounds claimed in the Notice?

Background and Evidence

The rental unit is the three bedroom main floor of a house. There is separate two bedroom suite below.

The tenancy started in December 2013 under a previous owner, who presently lives in the lower suite.

The monthly rent is \$1600.00, due on the first of each month, in advance. The landlord holds an \$800.00 security deposit and no pet damage deposit.

The landlord Mr. J.C. testifies that he purchased the home in January 2015 and was under the impression that no pets were allowed. He discovered the tenants had a small dog. He was not pleased by that fact, but he permitted them to keep it.

A few days before the Notice the landlord gave the tenants an email listing his complaints and concerns. He also attached it to the Notice served on the tenants. To summarize, the email said the tenants must remove all animals except for one small dog, that they had obstructed workers, namely roofers and landscapers, their hoarding habits have cost him money with appraisers and lenders, they produces waste and junk and they cannot use the garage anymore.

He had discovered from a neighbour that the tenants were keeping six cats (possibly with the addition of a litter of kittens from one of them). When he went to see the tenants about the cats, he discovered they were also keeping a pit bull dog.

The landlord says his gardener cannot cut the grass if there is dog feces in it.

He says he lent the tenants the use of the garage to allow the temporary storage while they cleaned out and removed items from the rental unit.

The landlord says the tenants had a large quantity of mulch wood chips delivered and that they have been spreading all over the yard with a big pile still in the lane.

The landlord could not specify what “illegal” activity the Notice refers to. He could not describe anything as “extraordinary damage.”

The tenant Ms. L.H. testifies the landlord let her use the garage but not for storage. There is no garage door. She’s spent a lot of time cleaning it.

She complains that the landlord enters the yard without notice.

The one occasion the landlord saw dog droppings was an accident and that the dog is a “therapy dog.”

She denies hoarding in the rental unit and does not know what the “waste and junk” is that the landlord refers to.

She says the mulch is for use on an adjacent city property and that it is not spread all over the yard; only a little under shrubs. There is no lawn in the back yard.

The tenant has not gotten rid of the small dog.

The tenant Ms. J.H., Ms. L.H.s daughter, testifies that the former landlord living below never complains. She says they have not been notified that the mulch is a problem.

Analysis

This decision was rendered orally at hearing.

I find that the landlord has not shown sufficient cause to end the tenancy.

First, there is no evidence that any other occupant, namely the prior landlord living in the suite below, has been significantly interfered with or unreasonably disturbed nor that the tenant is engaging in any illegal conduct.

I find the tenant has not breached any material term of the tenancy agreement.

It has not been proved that she has caused extraordinary damage to anything.

It appears the biggest issue for the landlord is the keeping of animals. The landlord is mistaken about the tenancy agreement. It does not prohibit or restrict the keeping of pets. Whether or not the tenant is keeping an unreasonable number of pets and whether they are posing a risk to the landlord's property is a different question and not one properly raised by this application.

As stated at hearing, I would recommend that the landlord exercise his right to give notice and inspect the premises on a reasonably regular basis and that he take steps to preserve evidence about the state of the premises through photos and the like. By that method he can reasonably determine (and later prove) whether or not the tenants' pets are causing damage.

Regarding the mulch, the evidence falls short of painting any reasonable description of the state of the mulch in the yard. I make no finding against the tenants. In any event, the tenants were not given reasonable notice that the mulch was a problem and so that claim cannot be relied upon at this hearing, to found the Notice.

As stated at hearing, the yard is a common area shared between the occupants of this rental unit and those below. The landlord is not required to give notice of his intention to come onto the common area.

The tenants have been given use of the garage/shop but that is not an area encompassed by her tenancy agreement. They have no contractual right to use it. The landlord may give permission, but equally, he can withdraw permission to use it.

Conclusion

The tenants' application to cancel the Notice to End Tenancy dated July 28, 2016 is allowed. The Notice is cancelled.

The tenants claim recover of the filing fee but they paid none so there will be no order for its recovery.

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 29, 2016

Residential Tenancy Branch