



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RICHMOND LEGION SENIOR CITIZEN SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated September 13, 2016. The Notice alleges that the tenants have not done required repairs of damage to the unit and that they have breached a material term of the tenancy agreement that was not corrected within a reasonable time after a written notice to do so.

It was apparent that the landlord's name was incorrect in the tenants' application document. It has been amended to reflect the landlord's true name.

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

Have the tenants failed to repair damage or failed to correct a material breach of their tenancy agreement after receiving written notice to do so?

Background and Evidence

The landlord is a non-profit society providing low cost housing. Its workers are volunteers and board members of the society.

The rental unit is a ground level, one bedroom apartment.

The tenancy started about ten years ago. The landlord claims that there is a written tenancy agreement but one was not submitted as evidence. The current rent is \$370.00 a month. The landlord does not hold any deposit money.

The tenants' rental unit has a ten foot by ten foot concrete patio accessible from the residence through a patio door.

The landlord says the tenants have constructed three walls to enclose the patio. She says they have installed a patio door in the end wall, so as to give access to the yard. She says the changes are structural changes and that clause 21 of the tenancy agreement prohibits structural alterations without the prior written consent of the landlord.

The tenant Mr. Q. says he's only constructed one wall; the end wall framed around a sliding glass door frame which does not have a door in it. He says the side walls to the patio were already there and are part of the apartment building structure. He says he has put a four and one half foot piece of plastic above the door frame to ward off water.

Mr. Q. says that approximately twelve other units in the complex have done similar work, all with the permission of the landlord and that permission for his work has been refused because he and Mr. P, a board member and volunteer are having a "personality dispute."

Ms. J. says the work done at other rental units is not similar and is more in the nature of trellises and the like, not the substantive construct she says the tenants have done.

Analysis

The landlord's evidence in support of the Notice is significantly inadequate. It relies on a clause in a tenancy agreement but it failed to provide a copy of the agreement. It relies on the fact of construction at the tenants' patio but failed to provide any objective evidence about that construction, not even a simple photograph.

The landlord has failed to show that the tenants have caused "damage" to the residential property and so I dismiss that ground for the Notice.

The breach of a material term of a tenancy agreement is a significant event. Residential Tenancy Policy Guideline 8, "Unconscionable and Material Terms" describes a material term:

A material term is 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, the Residential Tenancy Branch 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.

It is apparent that some alteration to a tenant's patio area is allowable by the landlord. The issue with this rental unit is the degree of that change. If there is a tenancy agreement and clause 21 is binding on the tenant, the unapproved additions described by the landlord, if they are indeed "structural alterations" have not put the tenants in breach of a material term of the tenancy. It is unlikely, in my view, that the parties when negotiating this tenancy agreement would readily have agreed that if the tenants built an enclosure around their patio without permission the tenancy would end.

The landlord's proper remedy is to seek an order that the tenants deconstruct the erection. Failure to comply with such an order is a valid ground for eviction under s. 47(1)(l) of the *Residential Tenancy Act*. Had the evidence presented about the structure and the tenancy agreement been clearer, such an order might have been considered at this hearing.

Conclusion

The tenants' application is allowed. The Notice to End Tenancy dated September 13, 2016 is cancelled.

The tenants are entitled to recover the \$100.00 filing fee. The tenants do not pay rent direct and so cannot deduct the filing fee from rent. The landlord's representative Ms. J. warrants that the landlord will pay the tenants the \$100.00 filing and the tenants are satisfied with that.

The tenants are free to apply if they do not receive the \$100.00 reimbursement in a timely manner.

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: November 08, 2016

Residential Tenancy Branch