



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a One Month Notice to End Tenancy for cause.

The tenant and landlords attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on November 01, 2015. Rent for this unit is currently \$1,050.00 per month due on the 30th of each month in advance.

The landlord LL testified that the tenant was served with a One Month Notice to End Tenancy for Cause (the Notice) on September 25, 2016 in person. This Notice has an effective date of October 28, 2016 and provides the following reasons to end the tenancy:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *The tenant or a person permitted on the residential property by the tenant has*
 - (iii) *Put the landlord's property at significant risk;*
- 3) *The tenant has not done required repairs to the unit, site of property*
- 4) *The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

LL testified that the tenant's rent payments have been repeatedly late on more than three occasions. LL referred to their documentary evidence showing the dates rent was due for each month, and the dates rent was paid. This information indicates that rent was paid late in April, May, September and October, 2016.

LL testified that the tenant is her brother and they have only started to provide him with rent receipts for his cash rent payments recently. LL testified that they need to have the rent paid on the 30th of each month in order to make their mortgage payments each month. Even when the tenant got a roommate the tenant was still responsible for the rent as his roommate was only an occupant and not a tenant.

LL testified that the tenant has put the landlords' property at significant risk. The tenant is responsible to maintain the yard and he has put a trailer on the front lawn which has killed the grass; he has not mown the grass or watered the flowers and grass and the grass and flowers have now died. The tenancy agreement states he is responsible for this maintenance. LL referred to text messages between the tenant and LL where the matter of the yard maintenance was discussed.

LL testified that the tenant has been smoking marijuana in the house when the tenancy agreement states no smoking in the unit. This smoking will have damaged the unit. The tenancy agreement also stipulates that the tenant must run the dishwasher at least once a month to prevent the seals breaking and the tenant has failed to do this.

LL testified that the tenant allowed flood water to come into the basement from the sidewalk and did not check the basement or inform the landlord of any flooding. The tenant is also required to keep the sidewalks clear of snow and ice and failed to do this work.

LL testified that the tenant is also responsible to maintain the furnace and to change the filters. The landlord SL had to go in and change the filter and it was found to be filthy so obviously the tenant had not been changing them regularly.

LL testified that the tenant has not done the required repairs to the rental unit. LL agreed that the tenant has not caused any damage himself that he would be required to repair at this time.

LL testified that the tenant has breached a material term of the tenancy agreement by not maintaining the unit and yard. LL and the tenant had a meeting on September 04, 2016 at that meeting the landlord read the terms of the tenancy agreement to the tenant and his roommate but the tenant said it was not his responsibility to do upkeep on the house. The landlord agreed that the tenant was not sent a breach letter asking him to rectify any material terms of the tenancy agreement by a set date. LL testified that the tenant has a brain injury and as LL has acted as the tenants advocate in the past she understands that the best form of communication with the tenant is verbal and not in writing. LL referred to a statement provided in documentary evidence from a witness to this conversation with the tenant in which the witness has written that the tenant clearly said he was not responsible for maintenance on the property and that it was the landlords' responsibility.

The landlords seek an Order of Possession of the rental unit effective on November 30, 2016.

The tenant disputed the landlords' claims that he has been repeatedly late paying rent. The tenant testified that he pays his rent in cash before it is due but the landlords have never given him receipts for these payments so the tenant is unable to show when his rent was paid.

The tenant disputed that he has caused significant damage to the rental unit. The tenant testified that his tenancy agreement states he is allowed to have a trailer on the property. With regard to the lawn mower it is hard to mow the lawn as it grows three feet tall. There were two lawn mowers at the property which had been left outside for five years and did not fire up. The tenant did borrow a Weed Wacker from the landlords but the grass is very patchy and there is only a two foot by three foot of area of grass and the rest is mostly dirt.

The tenant testified that there should be a drain pipe on the side of the house to take any water away. The sidewalk at the side of the house tilts towards the house and water drains against the side of the house. The tenant testified that he never saw any water leaking into the house but did see some leaking into the garage which forced the tenant to move some belongings and call the landlords to notify them.

The tenant testified that he is a non-smoker and does not smoke in the house. The tenant testified that he does run the dishwasher occasionally and there is nothing wrong with the seals. The tenant testified that he has been checking the furnace filters once a month and changed the filter yesterday.

The tenant testified that he goes to school full time and works and when he is not busy he has cleared the snow and ice from the sidewalk.

The tenant disputed that he has caused any damage to the house. The tenant agreed that on September 04, 2016 he did sit with LL and LL did speak to the tenant and his

roommate about maintenance on the house. LL did read out the tenancy agreement to them both. The tenant testified that LL spoke about the tenant's responsibility towards the house. The tenant disputed that he said that things were not his responsibility.

The tenant testified that he does not know how the landlords could check the filters on the furnace as they have never given the tenant a 24 hour written notice to enter the rental unit and if they have been into the unit it is without the tenant's knowledge. The tenant agreed that he does have a brain injury but he has read all the landlords' documentary evidence presented.

LL testified that when the tenant moved into the unit there was lawn at the back and front of the property and flowers in beds. The tenant placed his trailer on the grass which has killed the grass. The tenant also has a great deal of other debris on the lawn which has killed the grass.

SL testified that the tenant has not been changing the furnace filter as when SL went to serve the tenant with their evidence they had to move all his stuff out of the way to get into the unit to look at the furnace. The filter SL took out was so filthy it had looked as if it had never been changed.

LL testified that further to all the other maintenance issues, the landlord had to turn off the outside taps as the tenant neglected to do so when it was freezing and it was SL who cleared the snow and ice last winter.

The tenant testified that he does what he can when he is not at school or working. The trailer was put on his front grass by someone else as it was stored at the landlord's property and the tenant did not have insurance on it last year to move it.

The landlord testified that as far as she knows the tenant moved his trailer last year when he moved other stuff to the rental unit.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows: Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

I will deal with the first issue of repeatedly late payment of rent; the landlords have provided documentation listing the dates that rent was due and paid. The landlords have provided no other evidence to support this list and the tenant disputed that he paid his rent late on these occasions. The landlord referred to text messages between the parties but these do not substantiate the landlords' claim that rent was repeatedly late. When a tenant pays his rent in cash the landlord is required under s. 26(2) of the *Act* to provide the tenant with a receipt for payments made. Had the landlord complied with the *Act* regarding this then they would have sufficient evidence to show that rent was paid late. As the tenant was not provided with rent receipts he is unable to show when he made his rent payments to the landlords. Therefore without further corroborating evidence from the landlords I find the landlords have insufficient evidence to meet the burden of proof that rent has been repeatedly paid late.

With regard to the second reason provided on the Notice that the tenant has put the landlords' property at significant risk; LL testified about a number of issues concerning the maintenance of the property. The tenant has disputed each of these reasons. I refer

the parties to the Oxford dictionary which provides the definition of the word significant and states “*Sufficiently great or important to be worthy of attention; noteworthy*”.

With this in mind I turn my attention to the landlords’ testimony and documentary evidence regarding the maintenance of the home or lack thereof. I find I prefer the evidence of the landlords regarding the lack of lawn and garden care which has significantly reduced the appearance of the lawn and garden and that in accordance to the tenancy agreement the tenant was responsible for the upkeep of the yard; however, I am unclear as to how this has put the rental unit at significant risk. I am not satisfied that the tenant was responsible for any flood water from the tilting sidewalk entering the home, or that by the tenant not clearing snow and ice from the sidewalks how this would have put the rental unit at significant risk. I am not satisfied that the dishwasher has suffered from risk or been damaged by the tenant. I am not satisfied the landlords have sufficient evidence to meet the burden of proof that the tenant has smoked cigarettes or any illegal substance in the rental unit.

I find I do prefer the evidence of the landlords regarding the tenant’s responsibility to change the furnace filters each month and the lack of this maintenance could have put the furnace at risk but the landlords have insufficient evidence to show that the furnace has been damaged or compromised in any way. I therefore find this standing alone would not be sufficient reason to end the tenancy.

With regard to the third reason provided on the Notice that the tenant has not done required repairs to damage to the unit; LL agreed that the tenant has not caused any damage that she knows of to the unit that would require repairs.

With regard to the forth reason provided on the Notice; that the tenant has breached a material term of the tenancy agreement that was not corrected in a reasonable time after written notice to do so. LL agreed that she has not given the tenant written notice when he has been in breach of a material term of the tenancy agreement. LL testified that everything was discussed verbally with the tenant when the landlord went over the

tenant's responsibilities in the tenancy agreement. The *Act* does; however, require that the landlord put any breach of a material term in writing to the tenant and give the tenant an opportunity to correct the breach in a reasonable time frame. As the landlords have failed to address any breaches in writing then this reason provided has no merit at this time.

After consideration of the above, I find there was insufficient evidence to prove the reasons listed on the One Month Notice issued September 25, 2016. Accordingly, I uphold the tenant's application and the One Month Notice is hereby cancelled and is of no force or effect.

I do however caution the tenant to ensure he fully understands his responsibilities under the *Act* to pay his rent on the day it is due, to maintain the yard and to abide by all other terms of the tenancy agreement. If the tenant fails to do so the tenant may jeopardize his tenancy in the future.

I caution the landlords to ensure they provide the tenant with written rent receipts for any payments made in cash in accordance with s 26(2). of the *Act*, that they provide written Notice of entry to the rental unit in accordance with s. 29 of the *Act* and that they provide the tenant with any breach letters for any failure to comply with a material term of the tenancy in accordance with s 47(h)(ii) of the *Act* prior to listing this as a reason to end the tenancy on a Notice to End Tenancy for cause.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated September 25, 2016 is cancelled and the tenancy will continue until legally ended.

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 22, 2016

Residential Tenancy Branch