



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, OPC, MNR, MNDC, 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 and was attended by one of the landlords and both tenants.

The landlord clarified at the start of the hearing that she was not seeking an order of possession based on any of the 10 Day Notices submitted into evidence. I amend the landlords' Application to reflect this change.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for cause; to a monetary order for unpaid rent; 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 *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 21, 2016 for a month to month tenancy beginning on October 1, 2015 with rent of \$700.00 due on the 1st of each month with a security deposit of \$350.00 paid.

Both parties submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on October 31, 2016 with an effective vacancy date of November 30, 2016 citing the tenant is repeatedly late paying rent; the tenant has allowed an unreasonable number of occupants in the unit; and the tenant has engaged in illegal activity that has or is likely to damage the landlord's property.

The landlord submitted that the tenant was late paying rent on two previous occasions at which time she issued 10 Day Notices to End Tenancy for Unpaid Rent - one in March and one in June 2016. The landlord originally testified that the tenant has also failed to pay the full rent amount for the month of October 2016.

The tenants then testified and stated that the full amount of rent was paid for October 2016. The parties all agreed that the tenants have not paid the rent in full for the months of November and December 2016 and that \$1,200.00 is owed to the landlord for this period. The tenants submit that the landlord told them not to pay the rent until this hearing. The landlord disputes this claim and states the tenants never once offered to pay the rent owed for November and December 2016.

The tenants submitted that they had paid all rent owed for the month of October 2016. The landlord stated that she may have been incorrect in asserting that all rent for October 2016 was not paid.

The landlord submitted that the tenants have had a number of people coming and going from the rental unit at all hours of the day and night. The landlord stated that she was not including people coming and going during the day hours but only at night. The landlord confirmed in her testimony that they have not had any complaints from any other residents on the residential property of being disturbed by the tenants' guests.

The parties agreed that the tenants were inviting guests over from a nearby "tent city". The tenants further stated that they would let them clean up; warm up and would feed some of these people. The landlord submitted that they should not be responsible for the additional utilities the tenants use as a result of these people coming into the rental unit to clean up.

The landlord testified that they believed the tenants were selling drugs but they could not prove it. The tenants disputed the landlord's assertions of any illegal drug sales.

Analysis

From the testimony of both parties, I find the tenants have failed to pay rent in full for the months of November and December 2016 in the amount claimed by the landlord. As such, I find the landlord has provided sufficient evidence to establish they are entitled to a monetary order.

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

- a) The tenant is repeatedly late paying rent;
- b) There are an unreasonable number of occupants in a rental unit;
- c) 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.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

From the landlord's own submissions, I find that the landlord has provided sufficient evidence to establish that until the date the 1 Month Notice was issued the tenants had paid rent late on only 2 occasions. As the Notice had been issued on October 31, 2016, I find any payments that were late after the issuance of the Notice cannot be counted towards the total number of times the tenants were late paying rent.

As a result, I find the landlord cannot rely on repeated late payment of rent as a ground to end the tenancy at this time.

In relation to the landlords' claim that the tenants were engaged in any illegal activity that has or may result in damage to the landlords' property, I find, from the landlord's own testimony that they "cannot prove" the tenants are engaged in any illegal activity.

As a result, I find the landlord cannot rely on any illegal activity as ground to end the tenancy.

Residential Tenancy Policy Guideline #13 states that where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant. As such, an occupant is considered a person who is not a tenant who lives in the rental unit and shares the rent.

Despite the landlords' submissions that the tenant has had people coming and going at all hours of the day and night, I find these people are guests of the tenants and not occupants as defined above. As such, I find the landlords have provided no evidence to establish the tenants have allowed an unreasonable number of occupants into the unit.

As a result, I find the landlord has failed to establish any cause to end the tenancy at this time.

Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on October 31, 2016 and find the tenancy remains in full force and effect.

I find the landlords are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,250.000** comprised of \$1,250.00 rent owed and \$50.00 of the \$100.00 fee paid by the landlords for this application, as they were only partially successful in their Application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I also caution the tenants that failure to pay the outstanding rent to date as soon as possible may allow the landlord to issue a new 10 Day Notice to End Tenancy for Unpaid Rent.

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: December 19, 2016

Residential Tenancy Branch