



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, PSF, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for an order directing the landlord to provide services and for a monetary order for compensation and the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The female tenant SL attended the initial portion of the hearing and left the hearing when the male tenant SN joined the hearing. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on July 02, 2014. A tenancy agreement was filed into evidence. The monthly rent is \$1,450.00 payable on the first of each month. The rent includes laundry. Prior to moving in the tenant paid a deposit of \$650.00. The rental unit consists of a suite located on the upper floor of a two level home. The landlord lives below.

The tenant stated the laundry room is locked and located on the lower level. The tenant testified that despite his requests the landlord did not provide a key and therefore for the entire term of the tenancy, the tenant did laundry elsewhere.

The landlord stated in her written submission that the tenants did use the laundry at the start of the tenancy and then stopped using the laundry services without making any complaints to the landlord. The landlord stated that the tenants chose to do their laundry elsewhere even though the service was available to them.

On November 06, 2016 the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The effective date of the notice is January 31, 2017. The reason the landlord gave the notice to the tenant is handwritten. The landlord had checked marked the first box in the list of reasons to end the tenancy, has crossed out the printed reason and has written the following:

"Landlord has plans to do major renovations that requires the unit to be empty"

The tenant disputed the notice in a timely manner. At the start of the hearing the female tenant SL testified that they were moving out on January 08, 2017 and therefore was not disputing the notice to end tenancy. The male tenant SN gave contradictory testimony and stated that they had no plans to move out.

Analysis

Section 52 of the *Residential Tenancy Act* provides for the form and content of a notice to end tenancy and states as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Upon review of the notice to end tenancy I find that the grounds for ending the tenancy are not stated in the correct format. If the landlord needed to do renovations, then she needed to check mark the appropriate box on the notice to end tenancy and have the required permits in hand. The landlord did not check mark the proper box, hand wrote the reason and also did not have any permits in hand. Therefore I find that the notice is not valid and accordingly, I order that the notice be set aside and as a result, the tenancy will continue.

Regarding the tenant's claim for the cost of laundry, I accept the landlord's evidence that the laundry was available for the tenant's use and that the tenant chose to do laundry elsewhere. If the tenant was denied the service, he had opportunity to make application for an order directing the landlord to provide the service.

The tenants chose not to make application for dispute resolution and continued to use the service elsewhere for the entire term of the tenancy of two and one half years.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to take advantage of the availability of the laundry facility during the entire term of the tenancy and the tenant's failure to apply for an order directing the landlord to provide the service, if it was not provided, pursuant to the doctrine of laches, I find that this aspect of the tenant's application must hereby be dismissed. However, I order the landlord to make the laundry room available for use by the tenant by providing the tenant with a key or leaving the room unlocked.

Overall I find that the notice to end tenancy must be set aside and the tenant's application for compensation is denied. Since the tenant has proven one aspect of his case, I grant him the recovery of the filing fee. The tenant may make a one-time deduction of \$100.00 from a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant's application for compensation is dismissed. The tenant may make a one-time deduction of \$100.00 from a future rent towards the recovery of the filing fee.

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 29, 2016

Residential Tenancy Branch