



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Codes: CNC, MNDC, FF

Introduction

The tenants applied for an order pursuant to section 47(4) of the Residential Tenancy Act to set aside a Notice of End a Residential Tenancy for Cause dated January 6, 2017 and setting the end of tenancy for February 6, 2017. Additionally the tenants sought a monetary Order for compensation resulting from the landlords' breach of the covenant of quiet enjoyment amounting to \$ 2,500.00. All parties attended the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to an Order cancelling the Notice?

Preliminary Matters

The tenants indicated several matters of dispute on their application and confirmed that the main issue to deal with during this proceeding is the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenants' request to set aside or cancel the Notice to End Tenancy for Cause and I dismiss the balance of the tenants' claims with liberty to re-apply.

Background and Evidence

Based on the evidence of the landlord's agent DA, I find that the Notice to End the Tenancy was served by the landlords on January 6, 2017 by posting it to the tenants' door. The landlords acknowledged receiving the tenants' application for dispute resolution.

The landlords allege cause, in that the tenants have put the landlords' property at significant risk. The landlord's agent DA testified that when he took over as property manager he conducted a move in inspection on August 18, 2016 notwithstanding that the tenancy began on August 1, 2014. At that time he had not noticed whether there were any smoke detectors in the unit. RC testified that on December 25 or 27 of 2014 the fire department called her that they were notified that the monitored smoke detector in the tenants' unit had gone off but they could not contact the tenants.

DA testified that he installed a wired replacement smoke detector in the unit on November 26, 2016. At that time he noticed the absence of any other detectors and produced video evidence indicating that they were missing from their brackets on the ceiling of the unit.

DA testified that he received the records of the smoke detector monitoring from Prices' Alarm company who monitors the alarms and they indicated that the tenants' alarm "went off line" around January 2017. DA testified that when he made enquiries to the tenants about the missing detector on December 27, 2016 by email and they replied that they knew they were missing and thought that either the fire department, Prices' or the landlords had removed them.

Both landlords testified that they had not or permitted anyone to remove the detectors and alleged that the tenants must have removed them causing a significant risk to the landlords' property from whenever they were removed until November 2016 when a new one was installed.

The tenants testified that from the moment they moved in the previous smoke detectors' alarms kept going off repeatedly as they were placed too close to the stove and bathroom. They had notified the landlords of this issue several times. On December 25, 2014 the fire department attended a smoke alarm which the tenants say resulted from use of the oven. Several days later in January 2015 the tenants noticed that the smoke detectors were gone and assumed that the landlords, their agents, the fire department or Prices' had removed them. They deny removing them. The tenants say that the new alarm is still installed but it too goes off repeatedly and that they have complained of this to the landlord RC. The tenants request that I cancel the Notice to End the Tenancy.

Analysis

The Notice to End a Residential Tenancy relies on section 47(1) (d) (iii) of the Residential Tenancy Act. That section provides as follows:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(iii) put the landlord's property at significant risk;

In this matter the most relevant evidence of the landlord is hearsay and based upon unidentified witnesses' from Prices' Alarm company's logs that the alarm stopped functioning in January of 2017. There is a fundamental principle of natural justice that tenants have a right to confront witnesses. In this case the landlords have not have called any witnesses from Prices' to testify today. Accordingly I do not attach much weight to the Alarm Activity Reports. However the report itself indicates that the alarms

stopped reporting in January 2017 yet DA testified that as of November 2016 he observed that the alarms were missing. He testifies that the batteries were not exhausted or he would have received an alarm from Prices. Instead he alleges that the tenants must have removed the alarms from the building. Thus does not make any sense since they were still reporting until January 2017. His answer is that they were probably removed prior to November 2016 then removed from the building by January 2017. The landlords cannot account for the disappearance of the alarms but allege that the tenants must have removed them.

I found the tenants to be credible and accept their evidence that they did not remove the alarms.

The burden of proof on an application for an order for possession for cause rests with the landlords who must on the balance of probabilities establish cause. This onus must be satisfied strictly where the landlords seeks to end a tenancy. The theory of the landlords that the tenants must have removed the alarms is conjecture based upon hearsay and inconclusive evidence. I find that the sum total of the landlords' evidence does not on the balance of probabilities constitute the requirements of section 47 (1) (d) (iii) of the Act. I therefore find that the landlords have failed to prove cause on the balance of probabilities. I allow the tenants' application and have cancelled the Notice to End the Tenancy.

Conclusion

I have cancelled the Notice of End a Residential Tenancy dated January 6, 2017 and setting the end of tenancy for February 6, 2017. The tenancy is confirmed. I direct that the tenants are permitted to deduct the sum of \$ 100.00 representing recovery of the filing fee herein, from their next rental payment. I have dismissed with leave the balance of the tenants' applications.

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: February 06, 2017

Residential Tenancy Branch