



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

A hearing was convened to deal with the tenants' application to cancel a 1 Month Notice to End Tenancy for Cause dated February 25, 2017 (the "1 Month Notice") and for recovery of the application filing fee.

Both of the tenants and the landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to make submissions, and to respond to the submissions of the other party.

Service of the tenants' application and notice of hearing was not at issue. The tenants had submitted photographic evidence to the Residential Tenancy Branch but had not served the same on the landlord. Accordingly, the hearing was conducted without consideration of that evidence.

It was agreed that the tenants received the landlord's 1 Month Notice on February 25, 2017. The tenants filed their application to dispute the 1 Month Notice on March 3, 2017.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to recovery of the application filing fee?

Background and Evidence

Very little documentary evidence was submitted by either party. Neither party submitted the tenancy agreement. It was agreed that tenancy began in June or July of 2016 and that a monthly rent of \$1,400.00 is due on the 15th of the month. The landlord says that the contract was for a nine month fixed term. The tenants say that the tenancy became month to month tenancy after the expiry of nine months.

The 1 Month Notice alleges that the tenants have breached a material term of the tenancy agreement and not corrected it within a reasonable time after written notice to do so.

The landlord testified that she is the owner of the residence in question and lives upstairs. The rental unit is approximately two years old. About four months into the tenancy she entered the rental unit because she was renovating a wall. She saw that the living space was “unsanitary” and spoke to the tenants about it.

The landlord also testified that in or about February 20, 2017 she entered the rental unit to replace a broken water faucet in the bathroom. At that point she noticed a “foul smell” in the bathroom and that it was “unsanitary.”

The tenants say that the faucet tack welds were weak and that it broke because of simple wear and tear. They also say that they asked the landlord to give them 20 minutes to clean the bathroom before she entered to repair the faucet and that the bathroom was then cleaned, except for the bathtub, which is what the landlord then became concerned about.

The tenants submitted a letter from the landlord dated February 23, 2017. In that letter, which the landlord agreed that she delivered, the landlord states:

Afte speaking with your both the living area and washroom are not being maintained to a satisfactory level. This is notice that within a week I will be scheduling an inspection of the living area and upon which if there is no change one month notice will be given. [Reproduced as written]

The 1 Month Notice was served February 25, 2017. There is another letter from the landlord in evidence dated February 28, 2017 stating that she will inspect the suite on March 2, 2017. The landlord testified that on February 28 or March 1 one of the tenants texted her and told her she could not inspect. The tenant agreed he sent this text. He says that he then learned that he had to allow the landlord entry in accordance with the

Residential Tenancy Act (the “Act”) and that she inspected on March 15, 2017. The landlord agreed that she inspected at that point. She says that things were not much cleaner.

At one point the landlord appeared to state that she had issued the 1 Month Notice because the fixed term tenancy agreement had or was about to expire. As set out above, there was no written tenancy agreement in evidence and the tenants disagree that the tenancy has expired.

Analysis

Section 47(1)(h) of the Act allows a landlord to end a tenancy for cause where the tenant has breached a material term of the tenancy agreement and not remedied that breach within a reasonable time after written notice to do so.

If a tenant disputes a notice, the burden of proof is on the landlord on a balance of probabilities to establish the cause alleged. Here, the landlord has not submitted any documentary or photographic evidence in support of her claim, and her testimony was not sufficient to convince me that the tenants have breached a material term of the tenancy agreement.

Although there was no written tenancy agreement in evidence, s. 13 of the Act requires that tenancy agreements contain certain standard terms, one of which is that tenants maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. This may be a material term of the tenancy regardless of whether it is written into the agreement or whether the agreement is in evidence.

However, the landlord has not provided sufficient evidence to establish that the tenants have failed to maintain reasonable health, cleanliness, and/or sanitary standards. She has simply testified that the bathroom was “unsanitary.” The tenants admit that the bathtub had not been cleaned when the landlord attended to fix the faucet. However, a dirty bathtub and a broken faucet are not serious enough to warrant ending a tenancy for cause. In summary, the landlord has not established on a balance of probabilities that there is cause to end the tenancy under s. 47 of the Act.

Additionally, the landlord did not give the tenants a reasonable time to clean before issuing the 1 Month Notice. As set out above, the landlord gave the tenants written notice of her concerns on February 23, 2017. She told them she would be inspecting within a week. However, she issued the 1 Month Notice two days later, without having inspected again. Section 47(h) requires that the landlord give the tenants a reasonable

time to correct a material breach. The landlord advised the tenants that she would inspect within the week. Instead, two days later, on February 25, she issued the 1 Month Notice. She did not attempt to schedule an inspection until February 28. Accordingly the 1 Month Notice was also premature.

Lastly, the written tenancy agreement was not in evidence, the parties disagree on its terms, and were not clear as to the exact date the tenancy started. I cannot on this basis decide that the tenancy has expired. In any event that application is properly brought by the landlord (not the tenants) under s. 55(2)(c) of the Act.

Based on the reasons set out above I cancel the 1 Month Notice.

Conclusion

The tenants' application is allowed. The landlord's 1 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

As the tenants' application is successful, I grant the tenants the cost of the filing fee in the amount of \$100.00 pursuant to s. 72(1) of the Act. I authorize the tenants to withhold \$100.00 from one of their monthly rental payments in order to recover the \$100.00 filing fee.

Dated: March 31, 2017

Residential Tenancy Branch