



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

The hearing was adjourned to August 24, 2017 due to insufficient time. The hearing was reconvened with both parties in attendance.

Preliminary Issue

During the hearing both parties agreed that the landlords had requested and the tenants had paid a \$1,800.00 security deposit which is equal to the monthly rent. Both parties were cautioned that such a request is contrary to the Residential Tenancy Act. The landlords were directed to immediately return \$900.00 as the maximum allowed for a security deposit is ½ of the monthly rent.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that a signed tenancy agreement was made in which the monthly rent is \$1,800.00 payable on the 1st day of each month.

Both parties agreed that on May 28, 2017, the landlords served the tenants with the 1 Month Notice dated May 28, 2017. The 1 Month Notice sets out an effective end of tenancy date of June 30, 2017 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- the tenant has caused extraordinary damage to the unit.
- the tenant has not done required repairs of damage to the unit/site.
- Rental unit/site must be vacated to comply with a government order.

Listed on the details of cause:

See attached page signed, dated and numbered "1".

On the first reason for cause, the landlords claim that the tenants put the landlords' property at significant risk by putting items in the furnace room which are shown in the landlords' photographic evidence on page 17 taken on May 23 and 27 of 2017. The landlords state that the tenants were notified in May of 2017 to remove the items as this poses a safety hazard. The tenants dispute this claim stating that upon being notified the items were removed as per the tenants' submitted photographic evidence on page 5 dated June 3, 2017.

On the second reason for cause, the landlords claim that the tenants have engaged in illegal activity that has, or is likely to damage the landlord's property and/or adversely affect the quiet enjoyment, security, safety or physical well-being of the neighborhood. The landlords claim that the tenants have breached the peace due to excessive noise caused by domestic violence. The landlords claim that the tenants have repeatedly caused excessive noise during their arguments. The tenants dispute this claim. During the hearing the landlords' cancelled this portion of their claim. No further action is required for this reason for cause.

On the third reason for cause, the landlords claim the tenants or a person permitted on the property by the tenants have caused extraordinary damage to the unit/site or property. The landlords' claim that water damage has occurred which the tenants have failed to notify the landlord. The landlords claim that the flooring in the bathroom was damaged due to water which has caused it to be rotted. The landlord relies upon a photograph of the toilet which depicts some discoloration in the flooring around the toilet. The tenant disputes this claim stating that there is no water damage to the flooring around the toilet.

On the fourth reason for cause, the landlords claim the tenants have not done the required repairs of damage to the unit/site. During the hearing the landlords have cancelled this reason for cause due to repairs not done as required.

On the fifth reason for cause, the landlords claim that the rental unit/site must be vacated to comply with a government order. On this reason for cause, the landlords provided undisputed affirmed testimony that no such order was made and that this selection was made in error. As such, no further action is required for this portion of the landlord's reason for cause on the 1 Month Notice dated May 28, 2017.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the affirmed testimony of both parties and find on the landlord's first reason for cause that the landlord has failed to provide sufficient evidence that the tenants put the landlords' property at significant risk by putting items in the furnace room. Both parties confirmed that the tenants were advised that storing so many items in the furnace room was not advisable. The tenants stated that they had immediately complied and had

removed those items. The landlord disputed this, but was unable to provide sufficient evidence to support their claim.

On the landlord's third reason for cause that water damage has occurred in the bathroom flooring around the toilet, I find that the landlords have failed. The landlord relies heavily upon a photograph of discolored flooring around the toilet in the bathroom. This is disputed by the tenants who state that it is just dirty. The landlord is unable to provide any supporting evidence. As such, I find on a balance of probability that the landlords have failed to provide sufficient evidence of water damage which the tenants failed to notify the landlord about. This reason for cause is dismissed.

I find that as the landlords have failed to establish any of the reason(s) for cause as listed on the 1 Month Notice that the tenants application to cancel the 1 Month Notice dated May 28, 2017 is granted. The 1 Month Notice dated May 28, 2017 is set aside and the tenancy shall continue.

The tenants having been successful is also entitled to recovery of the \$100.00 filing fee. I order that the tenants upon receipt of this decision may withhold, one-time \$100.00 from the monthly rent to recover the filing fee.

Conclusion

The tenant's application to cancel the 1 Month Notice dated May 28, 2017 is granted. The tenancy shall continue.

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: August 31, 2017

Residential Tenancy Branch