



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act*; and
- an Order directing the landlord to comply with the *Act* or tenancy agreement pursuant to section 62 of the *Act*.

Both the landlord and the tenants attended the hearing. The landlord was joined at the hearing by his wife, J.R. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

Testimony was presented by the landlord that a 1 Month Notice to End Tenancy was served on the tenants in person on August 1, 2017. The tenants acknowledged receipt of this notice. Pursuant to section 88 of the *Act*, I find that the tenants were duly served with this notice.

The tenants testified that on August 8, 2017 they served the landlord in person with their application for dispute resolution. The landlord acknowledged receipt of this application. Pursuant to section 89 of the *Act*, I find that the landlord was duly served with the tenants' application for dispute resolution.

On September 18, 2017 the tenants filed an amendment to their application, seeking an Order under section 62 of the *Act* directing the landlord to comply with the tenancy agreement. As no parties would be prejudiced by this amendment, I amend the tenants' application pursuant to section 64(3)(c) to reflect this additional application.

Issue(s) to be Decided

Can the tenants cancel the landlord's notice to end tenancy? If not, should an Order of Possession be granted?

Should the landlord be directed to comply with the tenancy agreement?

Background and Evidence

A copy of the residential tenancy agreement entered into by the parties and supplied at the hearing as part of both parties' evidentiary packages shows that this tenancy began on August 1, 2016. Rent is \$1000.00 per month and a security deposit of \$500.00 collected at the outset of the tenancy continues to be held by the landlord.

The tenants are seeking to cancel a notice to end tenancy that was served on them on August 1, 2017. The reason cited on this notice for its issuance is;

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord explained that he had an oral agreement with the tenants that required both tenants to vacate the premises should one of them move out of the rental unit. The landlord testified that tenant, N.A. moved out of the rental unit towards the end of April 2017 or in early May 2017 and then moved back into the home on or around July 22, 2017. The landlord argued that this notice to end tenancy should be considered valid because the tenants had not fulfilled the terms of their agreement which specified that they would both vacate the rental unit if one of them moved out.

The tenants deny that tenant N.A. ever fully vacated the rental unit. They explained that they had been experiencing some personal issues that required tenant N.A. to temporarily reside with his grandfather. After some time, tenant N.A. returned to the rental home. The tenants deny that any agreement as described by the landlord existed and they said that they discussed this pause in N.A.'s occupation of the rental unit with the landlord.

In addition to a cancellation of the landlord's notice to end tenancy, the tenants are seeking an order directing the landlord to comply with their tenancy agreement pursuant to section 62 of the *Act*. The tenants explained that their gas has been shut off and that they cannot access the gas until the landlord call the gas company. The tenants said that they had informally spoken to an employee with the gas company who inspected their meter in mid-September 2017 and they were told by this person that they required the landlord's authorization to turn on the gas. As part of their evidentiary package, the tenants supplied gas bills showing these to be in the name of landlord A.B.

Analysis

The landlord explained that a Notice to End Tenancy for cause was issued to the tenants because they had breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8 discusses material terms in a tenancy agreement. It states;

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

To end a tenancy agreement for breach of a material term the party alleging a breach must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

After examining the tenancy agreements entered into evidence by both parties, I find little evidence that the tenants agreed to vacate the rental unit if one of them moved out. While the landlord explained that this clause was an oral agreement between the parties which was not recorded in the written tenancy agreement, I do not find that it falls within the definition of a 'material term' as described by *Residential Tenancy Policy Guideline #8*. Furthermore, no evidence was presented at the hearing that the landlord suffered in any way by the absence of tenant N.A. while he was living with his grandfather, or that any warnings were given to the tenants regarding the landlord's concerns. Nor was there any evidence that the tenants were aware that a problem even existed prior to the issuance of a Notice to End Tenancy.

As part of their evidentiary package, the landlord supplied the hearing with a series of text messages showing that tenant N.A. had moved in and out of the rental unit. In addition, he supplied two letters from neighbours describing his relationship with the tenants, gas bills in landlord A.B.'s name, and documents pertaining to assignment or subletting of a tenancy. I do not find any of this evidence to be relevant to the landlord's Notice to End Tenancy for breach of a material term because it does not relate to the tenant N.A.'s departure from the premises for a period of time.

For these reasons, I find that the tenants are entitled to the cancellation of the landlord's Notice to End Tenancy issued on August 1, 2017 because there is insufficient evidence to establish that they breached a material term of the tenancy agreement.

The second aspect of the tenants' application concerns difficulties they are having accessing gas in the rental home. Copies of gas bills submitted to the hearing by both parties show that landlord A.B. is named on the invoices from the gas supplier. It would be reasonable to conclude, therefore that only he has authorization to make decisions on supply of this material element of the tenancy.

Accordingly, pursuant to section 62(3) of the *Act*, I order the landlord to speak with the gas company by October 20, 2017 to ensure that the tenants have access to this necessary utility. Failure to follow this order may allow the tenants to apply for further compensation under the *Act*.

Conclusion

The tenants were successful in cancelling the landlord's Notice to End Tenancy. This tenancy shall continue until it is ended in accordance with the *Act*.

The landlord is ordered to speak with the gas company by October 20, 2017 to arrange for a gas connection at the rental unit to be re-established.

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: October 10, 2017

Residential Tenancy Branch