



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that complies with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenants, the Landlord, and the agent for the Landlord (the “Agent”), all of whom provided affirmed testimony. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Near the end of the hearing the Agent asked if they could serve a new Notice to End Tenancy on the Tenant on November 30, 2017, however, they would not provide any details regarding the reason for which they wished to issue the new Notice to End Tenancy. I advised the Agent that if the new Notice to End Tenancy relates to the same reasons for which this Application was made, they needed to await my decision; if not, the Landlord remains at liberty to serve a Notice to End Tenancy, if they have cause to do so under the Act. However, I advised them that without details regarding the reason for the issuance of the Notice to End Tenancy, I could not provide any further details and encouraged them to access the solution explorer online or speak with an Information Officer at the Residential Tenancy Branch.

Preliminary Matters

During the hearing the Agent stated that the Applicant D.S. is not a Tenant as they did not sign the tenancy agreement. The Applicants stated that although D.S. did not sign the tenancy agreement, they are a married couple and D.S. has always resided in the rental property with J.S., the Applicant who signed the tenancy agreement. Further to this, the Applicants stated that the Landlord was aware that they both resided in the rental unit.

I note that the One Month Notice issued by the Landlord named both Applicants as “Tenants” and that on page 2 of the tenancy agreement there is a handwritten note that states “Tenants must get tenancy Insurance. Copy to go to Landlord.” Based on the above, I am satisfied that the both J.S. and D.S. are tenants under the *Act* and I will therefore refer to them collectively as the “Tenants” in this decision.

At the start of the hearing the Agent identified that they would be providing the majority of the testimony and evidence on behalf of the Landlord, however, many opportunities were provided throughout the hearing for the Landlord, the Agent, and the Tenants to provide testimony. Near the close of the hearing, when I was confirming the manner in which the parties wished to receive the decision, the Landlord stated that they had not been given any opportunity to provide testimony. I advised the Landlord that it was always open to them to provide testimony during the hearing and that I had asked many times throughout the hearing for both the Landlord and the Agent to provide testimony. In any event, I advised the Landlord that as the hearing had not yet been concluded, I would accept their testimony at this time.

The only testimony provided by the Landlord at that time was unrelated to the Application or the One Month Notice, and as a result, I requested that the Landlord focus their testimony on the issues relevant to the hearing. At that point the Landlord stated that they had no further testimony to provide and the hearing was concluded.

Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the *Act*?

If the Tenants are unsuccessful in seeking to cancel the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the *Act*?

Are the Tenants entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy began September 1, 2015, and that rent in the amount of \$1,200.00 is due on the first day of each month. The tenancy agreement also states that at the end of the fixed-term, the tenancy may continue on a month to month basis or another fixed length of time. No additional tenancy agreement was submitted and the parties agreed that the tenancy continued on a month to month basis, under the same terms and conditions.

The One Month Notice, dated September 9, 2017, has an effective vacancy date of October 31, 2017, and indicates the following reasons for ending the tenancy:

- The Tenant is repeatedly late paying rent;
- The Tenant or a person permitted on the residential property by the Tenant has put the Landlord's property at significant risk; and
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord.

The One Month Notice indicates that it was personally served on the Tenants on September 9, 2017, and the Tenants confirmed receipt of the One Month Notice on this date and in this manner.

The Agent testified that the Tenants engaged in illegal activity that jeopardized the lawful right or interest of the Landlord when they began running an esthetics business out of the basement without permission from the Landlord and by completing renovations to the property in relation to the esthetics business without permits or the consent of the Landlord. The Agent testified that by running their business without the knowledge or consent of the Landlord, the Tenants placed the Landlord's property at risk because the Landlord's insurance provider was not aware of the business and therefore the Landlord's property may not have been properly insured. Further to this, the Agent testified that as the renovations were done to the property without a permit or the Landlord's consent, there may be a fire risk to the Landlord's property.

The Tenants testified that the Landlord and the previous property manager were both aware that sometime after they rented the residential property, they began running an esthetics business out of one of the rooms in the basement and that they made

alterations to one of the rooms in the basement for this purpose. The Tenants testified that these renovations included the addition of flooring, raising the ceiling, and painting the walls in a one room. In any event, the Tenants testified that all work was done by a certified carpenter and that none of these changes required a permit as no changes were cosmetic and no changes were made to the structural components, the electrical, the plumbing, or the heating/HVAC systems.

All parties agreed in the hearing that the tenants had altered some duct work originating in the furnace room. The Agent testified that the Tenants had re-routed the cold-air return for the furnace to a fan that they installed in an adjacent room without the Landlord's consent. The Agent testified that they have had several conversations with the fire chief who advised them that this is a fire risk; however, the Agent stated that as of the date of the hearing, the property has not been inspected by the fire chief.

The Tenants disagreed with the testimony of the agent stating that when they moved into the property, the duct work they re-routed to the fan was not in any way connected to the furnace. They testified that the ducting was connected to the outside on one end and was not connected to anything on the other, which is why they chose to use it. In support of their testimony they submitted a photograph which they stated showed the position of the unconnected end of the duct at the time they moved in. Further to this, the Tenants testified that as soon as they were notified by the Landlord that the alterations were not permitted, they returned the duct work to its original condition. When asked, the Agent testified that they could not verify if this had been done, as they have not inspected the property since they first noticed the issue.

The Agent also testified that the Tenants are keeping flammable liquids and chemicals close to the furnace, which is a significant fire risk. In support of this testimony they pointed me to a photograph in their evidence of containers on a shelf near the furnace. The Tenants agreed that there are containers on the shelf near the furnace but testified that none of them contain any flammable materials. They also stated that the photograph referenced by the Landlords does not contain any detail of the writing on the bottles and is therefore not evidence that these materials are in any way flammable.

Further to this the Agent testified that the Tenants have been repeatedly late on rent because they paid rent late in September and November of 2015, May of 2016, and January, May and September of 2017. The Tenants testified that they did pay rent late in January and May of 2017, but disputed that they paid rent late in September 2017. The Tenants pointed to their documentary evidence showing that two separate electronic money transfers were sent to the Landlords on September 1, 2017, each in

the amount of \$600.00. As a result, the Tenants stated that they paid the \$1,200.00 September rent on time. The Agent and the Landlord acknowledged receipt of these transfers.

Analysis

The ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove they had sufficient cause under the Act to issue the notice. Having carefully reviewed the evidence before me from both parties, I find that for the following reasons the Landlord has failed to establish, on a balance of probabilities, that they had cause to end the tenancy under section 47 of the Act.

Policy Guideline 32 defines illegal activity as activity that is a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It states that the party alleging the illegal activity bears the burden of proof and should be prepared to establish the illegality by providing a legible copy of the relevant statute or bylaw. Further to this, Policy Guideline 32 states that in considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration will be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The Agent and the Landlord did not provide testimony regarding the exact statute or bylaw being violated, a legible copy of the relevant statute or bylaw, or any documentary evidence to corroborate their testimony that the above noted activities constitute illegal activity. As a result, I find that the Landlord failed to establish that any activity engaged in by the Tenants was illegal. Further to this, I find that the Landlord failed to establish that this activity, whether legal or not, was sufficiently serious to warrant terminating the tenancy.

Although all parties agreed that some duct work in the furnace room had been altered, they disagreed about the purpose of this duct work and whether the alteration of it created a significant risk to the property. Neither the Agent nor the Landlord provided any documentary evidence to corroborate their testimony that the duct work related to the furnace or to indicate the condition of this duct work prior to the start of the tenancy. The Agent and Landlord also did not provide any documentary evidence to corroborate their testimony that the alteration of this duct work created a significant fire risk to the property. Further to this, although the Agent and Landlord alleged that flammable chemicals were present in the furnace room, the Tenants denied that the contents of

any bottles in that room were flammable, and no documentary evidence was submitted by the Landlord in support of their claim. As a result, I find that the Landlord failed to establish that the Tenants or a person permitted on the residential property by the Tenants put the Landlord's property at significant risk.

Finally, although the *Act* allows a landlord to end a tenancy where the tenant is repeatedly late paying rent; section 38 of the Policy Guidelines states that three late payments are the minimum number sufficient to justify a Notice to End Tenancy. Section 38 of the Policy Guidelines also states that if the late payments are far apart, an arbitrator may determine that the tenant cannot be said to be “repeatedly” late and that a landlord who fails to act in a timely manner after the most recent late rent payment, may be determined by an arbitrator to have waived reliance on this provision.

Based on the above, I find that the Landlord failed to act in a timely manner with regards to the late payments of rent alleged to have been made in September and November of 2015, and May of 2016. As a result, I find that the Landlord has waived reliance on this provision in relation to those months. Further to this, I find that the Tenants did not pay rent late in September 2017, as all parties agreed that the full rent owed was paid by electronic transfer before midnight on September 1, 2017, which is the day in the month that rent is due under the tenancy agreement. Although all parties agreed that rent was paid late in January and May of 2017, I find that two late payments of rent does not meet the minimum number required under the Policy Guidelines to justify ending the tenancy under section 47 of the *Act*. For these reasons, I order that the Notice is cancelled and of no force or effect.

Based on the findings above, and pursuant to section 72 of the *Act*, I also find that the Tenants are entitled to the recovery of the \$100.00 filing fee, which they are entitled to deduct from the next months rent.

Conclusion

I order that the One Month Notice dated September 9, 2017, be cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

The Tenants are also entitled to the recovery of the \$100.00 filing fee, which they are entitled to deduct from the next months rent.

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*. At the request of

the parties, copies of this decision will be sent via e-mail at the addresses they provided in the hearing.

Dated: November 7, 2017

Residential Tenancy Branch