



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed term tenancy began on June 1, 2015 and reverted to a month-to-month tenancy after the first year, and the tenants still reside in the rental unit. Rent in the amount of \$1,200.00 per month was originally payable on the 1st day of each month, was increased from time-to-time and is currently \$1,280.80 per month effective December 1, 2017. There are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite within a side-by-side duplex and the other side is also tenanted. A tenancy agreement exists, but a copy has not been provided for this hearing.

In April, 2016 the landlord asked the tenant to build a new deck, balcony, railings, fence and gate for one free month of rent. In June, 2016 the landlord offered that no rent would

be paid for July, 2016 for the work. The landlord purchased materials from a list provided by the tenants which were delivered in 2 truck loads. The tenant finished the deck and balcony but the railings in the front and back need reinforcing, and the fence and gate are not completed. No rent was paid for July, 2016, but as soon as the rebate of rent was given, the tenant stopped working.

The landlord also testified that during the tenancy the rental unit was renovated, including the bathroom. The tenant told the landlord that a guest broke a pipe under the sink in August, 2017, and the landlord had a plumber attend right away to repair it. The landlord does not yet have a bill from the plumber but told the tenants they were responsible.

The landlord further testified that on September 1, 2017 the landlord served the tenants with a One Month Notice to End Tenancy for Cause by personally handing it to one of the tenants. A copy has been provided as evidence for this hearing by the tenants and it is dated September 1, 2017 and contains an effective date of vacancy of October 1, 2017. The reason for issuing it states: "Tenant has not done required repairs of damage to the unit/site." The landlord collected rent for November and December, 2017 but was not asked for a receipt and none was given.

The landlord orally requested an Order of Possession.

The tenant testified that the tenants didn't cause any damage to the rental unit.

The parties had agreed on the job for the deck, balcony, railings, fence and gate, and the tenant provided lists of materials required in stages. When the tenant asked for more material to finish, the landlord said she didn't have the money available at that time which occurred on at least 2 occasions. The landlord's evidentiary material shows that the driver thought it was enough to finish the deck, however the driver didn't even know what size the deck was to be. The agreement was for labor in the amount of \$1,200.00 and it was the landlord's idea to not collect rent for July, 2016 to pay for the labor. About 90% of the work is finished, but 4 x 4's are still needed for support for the railing as well as more materials for the gate and partial fence. There were 2 deliveries of materials provided by the landlord, and the tenants also brought in material with their own vehicle which was reimbursed by the landlord. There are currently 3 boards under the deck but are not suitable to finish the job.

With respect to the bathroom sink, the tenant denies telling the landlord who or how it broke, and denies that the landlord ever said anything about the tenants paying for it. The tenant talked to the plumber on December 4, 2017 who said that it was not a moving part, that the plumber had not installed it, and whoever installed it did so improperly.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. However, because rent is payable on the 1st day of the month, the effective date of notice is changed from October 1, 2017 to October 31, 2017.

The reason for issuing the notice is in dispute.

No one has provided me with a copy of the tenancy agreement, however no one testified that building a deck, fence or railing were terms of the tenancy agreement, and I find that they were not. Even though the landlord collected no rent for one month, I find that the contract was an employment arrangement between the parties for exactly the same amount as one month's rent, and was not a term of the tenancy agreement and the *Residential Tenancy Act* does not apply.

With respect to the broken pipe under the bathroom sink, the landlord testified that the tenant told her a guest broke it, which is denied by the tenant. The landlord also testified that she had a plumber attend to repair it right away and told the tenants they were responsible, which is also disputed by the tenant. The reason for issuing the notice to end the tenancy is that the tenants didn't make required repairs, but the landlord had the repair completed by a plumber right away. Further, the tenant testified that the plumber told the tenant the break was due to improper installation. The landlord does not yet have an invoice, and there is no evidence before me to support the landlord's claim that the tenants or a person permitted on the property by the tenants caused the damage. I am not satisfied that the landlord has established that the tenants were required under the tenancy agreement or the law to make repairs.

The landlord also collected rent continuously after the effective date of the One Month Notice to End Tenancy for Cause, without giving the tenants a receipt or some other writing that indicated that the rent was being accepted for use and occupancy only. Therefore, I find that the landlord has effectively reinstated the tenancy.

In the circumstances I am not satisfied that the landlord had cause to issue the notice to end the tenancy and I cancel it.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants in that

amount and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated September 1, 2017 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act*, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: December 05, 2017

Residential Tenancy Branch