



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC CNC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the respective applications and evidence submissions.

Issues

Should the One Month Notice be cancelled? If no, is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The parties entered into a tenancy agreement on October 16, 2016 however the tenant did not move into the rental unit December 1, 2016. The monthly rent is \$1000.00.

The landlord served the tenant with the One Month Notice on October 28, 2017. The tenant acknowledged receipt of the One Month Notice. The tenant’s application to dispute the One Month Notice was filed on November 3, 2017 within the timeline permitted under the Act.

The One Month Notice was issued on the following grounds which fall under section 47 of the Act:

- *the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;*
- *the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*

- *the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;*

The landlord submits that the tenant has done various renovations to the rental unit without authorization. The landlord has requested the tenant to stop performing renovations but the tenant insists he is increasing the property value. The landlord provided various examples and pictures of the renovation work done by the tenant. The landlord submitted a quote from a contractor for bringing the house back to its original condition. The landlord submits the police have been called at various times due to complaints from the neighbors. The landlord also submits the tenant has numerous vehicles parked on the rental property and that he has asked him to remove them. The tenant has since moved some of the vehicles to the back of the property. The landlord submits that in the fall of 2017 a tree branch came down on the roof; the tenant alerted the landlord of the issue but then just went ahead and repaired the roof on his own. The landlord submits the tenant is not a qualified roofer and as such has put the landlord's property at risk.

The tenant testified that although he gave the landlord a deposit for the rental unit on October 16, 2016, he did not move into the rental unit until December 1, 2016. The tenant submits this was due to the fact that he and "his crew" worked on the rental property for 6 weeks renovating it to make it livable. The tenant testified that the landlord was fully aware that the tenant was doing renovation work and the landlord even visited during this time and stated he loved the renovation work. The landlord also came to collect rent every month and took no issue with any of the renovation work. The tenant submits he had to dig up the septic as it didn't work, cleaned the chimney, repaired the hot water tank, installed a hot tub and various other work throughout the entire house all which was done before he moved in. The tenant submits that he does renovation work for a living and he has employees who do most of the work. The tenant submits the vehicles referred to by the landlord are not in the front yard but rather on road allowance. The tenant submits that he did notify the landlord about the branch coming through the roof and advised the landlord he would repair it. He ended up just moving the branch off the roof and clearing the gutters and no repair work was performed. In regards to the police being called, the tenant submits the neighbor calls the police on everybody for every little thing.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

I accept the tenant's testimony that the majority of the renovation work completed by the tenant was done before he moved in back in December 2016. I find the landlord must have been aware of the work undertaken by the tenant and took no issue with it at the time. The landlord cannot now expect the tenant to restore the rental property to its original condition. If the landlord no longer wishes to permit the tenant from undertaking any further renovation or repair work without the landlord's authorization, the landlord needs to inform the tenant of this in writing and put the tenant on notice that doing so may be a material breach of the tenancy agreement. With respect to the recent repairs work performed to the roof, I find there is insufficient evidence that the tenant undertook repair work versus just removing the branch off the roof. Further, there is insufficient evidence that by doing the alleged repair work, the tenant put the

landlord's property at significant risk. With respect to the police being called and complaints from neighbors, the landlord failed to present any specifics of the alleged complaints or police reports of the incidents.

I find that the landlord has failed to prove sufficient cause to end the tenancy as per each of the grounds indicated on the One Month Notice.

The One Month Notice dated October 28, 2017 is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application.

Conclusion

The One Month Notice dated October 28, 2017 is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

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: February 9, 2018

Residential Tenancy Branch