



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, FFL
 CNC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession for cause; a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for cause.

Both landlords and the tenant attended the hearing, and the tenant was accompanied by an Advocate as well as the tenant's son and a co-tenant for support. One of the landlords and the tenant gave affirmed testimony and the parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the landlord withdrew the application for a monetary order for unpaid rent or utilities.

Issue(s) to be Decided

The issue remaining to be decided is:

- have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reason(s) for issuing it, or should it be cancelled?

Background and Evidence

The landlord testified that this fixed term tenancy began on September 1, 2016 and the tenant still resides in the rental unit with his adult daughter. The parties entered into another written agreement on August 28, 2017 for a tenancy to begin on September 1, 2017. Rent in the amount of \$1,300.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant 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 one of 2 basement suites, and the landlords reside in the upper level of the home and occupy a portion of the basement. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on June 9, 2018 the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause, and a copy has been provided as evidence for this hearing. It is dated June 9, 2018 and contains an effective date of vacancy of July 15, 2018. The reason for issuing it states: "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 testified that multiple notices were placed on the door of the rental unit in March, 2018 saying, "Please do not smoke in front of doors and windows," but has not provided copies. The landlord also testified that the landlords have made verbal requests that tenants close windows and doors every other week since March. The tenant told the landlord that since they are not smoking inside, they are allowed to smoke anywhere outside. However, smoke enters up to the landlords' deck and bedroom window above the covered patio where the tenants smoke. An Addendum was signed by the parties on August 28, 2017 for a new fixed term commencing September 1, 2017, and a term states:

"1) Due to the increased risk of fire from smoking, increased maintenance and cleaning costs from smoking, and the known health effects of second hand smoke, the Landlord has designated the residential premises as Smoke Free. The tenant(s), any occupant of the tenant(s) household, and any persons affiliated with the tenant or invited onto the residential property or residential premises by the tenant(s) or any occupant or member of the tenant's household are prohibited from smoking inside the residential premises. Smoking is only permitted outdoors provided that the smoke is not entering the premises."

A photograph of the tenant and the tenant's adult daughter smoking on a patio under a covered area has been provided as evidence for this hearing. The door to the rental unit is closed, and the landlord testified that it is contrary to the tenancy agreement

because the smoke enters the landlord's unit. The tenants can smoke anywhere away from the covered patio. The landlords are non-smokers, and it became a problem in March because the landlords started using the back yard.

The parties had a hearing in May, 2017 and the landlord agreed at that time to cancel a notice to end the tenancy and the parties agreed to certain terms, including no smoking in or around the rental unit and the tenants promised in good faith to move out in the summer.

The tenant testified that the landlord yells and screams at him and is abusive. The tenant denies that any notices have been placed on the door of the rental unit about smoking. The parties agreed in September, 2017 that the tenants would not smoke inside, but only outside, which they have been doing. The landlord has verbally told the tenants they could smoke anywhere outside, but now the tenant smokes in his car. There is no lighting outside except on the covered patio.

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. Further, the *Act* specifies what reasons qualify to end a tenancy for cause, one being breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I have reviewed the tenancy agreement, and given that the parties signed the Addendum on August 28, 2017, and given that the landlord testified that it became a problem in March because the landlords started to use the back yard and the landlords are non-smokers, I am satisfied that the condition in the Addendum is a material term.

The landlord testified that the tenant was given numerous written notices by posting them to the door of the rental unit, but has not provided copies and the tenant disputes that. The landlords must give written notice of the breach and a reasonable time to correct the breach after written notice is given. I am not satisfied that the landlords have done that, and therefore, I am not satisfied that the Notice was given in accordance with the *Residential Tenancy Act*.

The landlords' application is dismissed, and the One Month Notice to End Tenancy for Cause is cancelled, and the tenancy continues.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed in its entirety.

The One Month Notice to End Tenancy for Cause dated June 9, 2018 is hereby cancelled and the tenancy continues.

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: July 25, 2018

Residential Tenancy Branch