



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, OLC, MNSD, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated July 23, 2018
- b. An order to restrict or set conditions on the landlord's right to enter the rental unit.

The Application for Dispute Resolution filed by the Landlord seeks the following:

- a. An order of Possession
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenants by posting on July 23, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. :

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the one month Notice to End Tenancy dated July 23, 2018?
- b. Whether the tenants are entitled to an order restricting or suspending the landlord's right to enter the rental unit?
- c. Whether the landlord is entitled to an Order of Possession?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on May 1, 2016 when the parties entered into a one year fixed term tenancy agreement that became month to month of the one year. The present rent is \$1266 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$587.50 at the start of the tenancy. .

Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk
- ...
- Tenant has caused extraordinary damage to the unit/site or property/park
- ...
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

The landlord seeks to end the tenancy based on the following evidence:

- In the late spring the landlord served a one month Notice to End Tenancy on the tenants in another unit. The landlord was successful in obtaining an Order of Possession.
- The bailiffs who enforced the Order of Possession in that unit provided a letter stating "...the stench of animal urine was disgusting. We had our 3 movers attend with two Court Bailiffs after being in the suite for approximately two hours some of us were nauseous from the urine smell as well our eyes were burning, some of us also had rash around ankles or little red bites I'm guessing from fleas...."
- The landlord testified the tenants in that unit had 8 pets.
- The landlord's employees who attended were bitten by fleas and suffered a severe reaction and required medical treatment..
- A pest control contractor treated that unit for fleas.

- One of the tenants from that unit has moved to the rental unit of the tenants bringing his belongings. This is dangerous as he is moving the flea infestation to the tenants unit.
- The tenants refuse to require this previous tenant to vacate their rental unit despite being requested to do so.
- This creates a health risk by allowing that tenant and his belongings to contaminate the tenants' unit.
- The tenants from this unit assisted the tenants in disputing their eviction and going to the newspaper.
- They produced a complaint letter from another tenant about the presence of one of the tenants from the other rental unit in the building.

The tenants responded as follows:

- They are not responsible for the condition of the rental unit that lead to the eviction of the tenants in the other unit.
- They are Church going and they acknowledge it is their obligations to help others.
- The tenant in the other unit has not moved into their unit. She and her husband are disabled. Both have scooters and a walker. Her husband has limited visibility because of cataracts. She spent a week visiting friends on the Gulf Islands and her husband needed a assistance. The tenant from the previous unit stayed with her husband for a week while she was away.
- The tenants from the previous unit are not storing their belongings in their unit. They have bought a wooden dresser and two wooden book shelves from the other tenants.
- They do not have fleas in their unit.
- They have two cats and a talking parrot. The landlord has been fully aware of their pets.
- The landlord gained access to their rental unit without giving proper notice alleging there was an emergency when no emergency existed.
- The landlord refused to provide the Tenants with particulars of the basis for the eviction when the male tenant went to the office and requested an explanation.

Tenants' Application::

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- One of the fundamental principles of our legal system is that a party must give the other side sufficient Notice of the basis for their claim. A Notice to End Tenancy includes a section entitled “Details of Cause(s).” There is also a statement that the RTB may cancel the notice if details are not described. The landlord failed to provide details. The landlord failed to provide an explanation to the Tenant(s) when requested. While this may give the landlord a tactical advantage it amounts is contrary to the principle of natural justice. The Notice to End Tenancy should be cancelled on that basis alone.
- Further, I determined the landlord failed to establish sufficient cause to end the tenancy based on the evidence presented at the hearing. The landlord failed to prove that a flea infestation has resulted in the tenants’ rental unit because of the actions of the tenant from the other rental unit. The landlord failed to present evidence of an infestation in the tenants’ unit. Further, the landlord failed to sufficient that the tenant from the other unit caretaking the male tenant for a week or by the purchase of the wooden dresser and wooden shelves amounts to a significant risk. .
- The landlord failed to present sufficient evidence to establish that the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord or put the landlord’s property at significant risk.
- The landlord failed to present sufficient evidence that the tenant or person permitted on the property by the Tenant has caused extraordinary damage as required by the Act.
- The landlord failed to provide the Tenant has breached a material term of the tenancy agreement. The landlord failed to identify what the tenants did which amounted to the breach of a material term. If the landlords are relying on the breach of the pet clause they have waived relying on that clause as they have been fully aware that the tenants have two cats and a parrot.

In summary I determined that the landlord failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

I dismissed the Tenants’ application for an order restricting or setting conditions on the landlords’ right to enter the rental unit as the Tenants failed to present sufficient evidence to prove that such an order was appropriate. However, as a courtesy to the

parties I have included section 29 of the Residential Tenancy Act which sets out the landlords' right to enter the rental unit:

"Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b)."

Landlords' Application:

I dismissed the landlord's application for an Order of Possession as the Notice to End Tenancy has been cancelled for the reasons set out above. I dismissed the landlord's application for an order to recover the cost of the filing fee as the landlord has not been successful with this application.

Conclusion:

I ordered that the one month Notice to End Tenancy dated July 23, 2018 be cancelled. I dismissed the Tenants' application for an order restricting or setting conditions on the landlord's right to enter the rental unit. I dismissed the landlord's application for an Order of Possession and to recover the cost of the filing fee.

This decision is final and binding on the parties.

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: September 17, 2018

Residential Tenancy Branch