



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC FFL AAT CNC ERP LAT LRE OLC OPT PSF RP RR

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:

The landlords requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlords’ right to enter the rental unit pursuant to section 70;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to allow the tenants to change the locks to the rental unit pursuant to section 70; and
- an Order of Possession of the rental unit pursuant to section 54.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications and evidence.

The tenants confirmed receipt of the 1 Month Notice, which was personally served to them on July 7, 2018. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

Issues

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to recover the filing fee for their application?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to allow the tenants to change the locks to the rental unit?

Are the tenants entitled to an order requiring the landlords to make repairs to the rental unit?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to an order to suspend or set conditions on the landlords' right to enter the rental unit?

Background and Evidence

This fixed-term tenancy began on December 15, 2017 with monthly rent currently set at \$1,180.00 per month, payable on the first of each month. The landlords currently hold a security deposit of \$300.00, and a pet damage deposit in the amount of \$250.00. The tenants continue to reside in the rental suite.

The landlords submitted the notice to end tenancy providing the following grounds:

1. The tenant or a person permitted on the property by the tenant has:
 - i) significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - ii) put the landlord's property at significant risk; or

- iii) seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- 2. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to:
 - i) Damage the landlord's property;
 - ii) adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;
- 3. The tenant knowingly gave false information to prospective tenant or purchaser/site.

The landlords provided the following reasons for why they are seeking the end of this tenancy. The landlords testified that the tenants are growing marijuana in the rental unit, and therefore put the property at risk. The landlords are concerned that the tenants' actions could affect their home insurance, and increased the risk of fire in their home. The landlords are also concerned that the tenants smoke in the home, and play loud music late at night. The landlords are extremely concerned that the tenants are engaged in illegal activity, and admit that they have installed cameras around the home. The landlords have threatened to call the police on the tenants, and feel that the tenants were not honest in their rental application.

The landlords confirmed in the hearing that they were not aware of any current charges against the tenants for illegal activity committed during this tenancy. The landlords also confirmed that the tenants have not given false information to any prospective tenants or purchasers.

The tenants testified that they are constant harassment by the landlords, which include an incident when one of the landlords entered the rental unit through a window. The tenants testified that they are extremely fearful, and the son of the tenants had to leave for a month after being threatened by the landlord.

The tenants dispute that they grow marijuana, or smoke inside the home. The tenants testified that the rental unit is not compliant with city bylaws, and that they are the ones suffering from loud noise from adjacent units.

The tenants are seeking a rent reduction in the amount of \$1,500.00 for the landlord's failure to address the hot water problem in their rental unit. The tenants testified that they had made numerous requests for repairs, but the landlords dispute that there are

any issues with the hot water. The landlords testified that they have contacted a plumber, but found nothing wrong with the water.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants filed their application on July 8, 2018, one day after receiving the 1 Month Notice. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlords have the burden of proving they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

It was undisputed by both parties that the tenants have not given false information to a prospective tenant. On this basis, the landlords' application for an Order of Possession on this basis is dismissed.

As the tenant was successful in her application, I allow her to recover the filing fee for her application. The landlord's application to recover the filing fee is dismissed.

The landlords testified that the tenants are growing marijuana in the rental unit, which the tenants dispute. The landlords confirmed in the hearing that they are not aware of any current or pending charges against the tenants during this tenancy. I find that the landlords did not provide sufficient evidence to support that the tenants had engaged in any illegal activity, and accordingly I cannot grant an Order of Possession on that basis.

The landlords also expressed concern that the tenants had put the property at risk, including the fact that their home could be uninsurable based on the tenants' actions. I find that the landlords have not provided sufficient evidence to support that the tenants have posed a risk to the home insurance, nor am I satisfied that the landlords have provided sufficient evidence to support how the tenants have put the property at risk. On this basis, I am not granting an Order of Possession for illegal activity or on the grounds that the tenants put the property at significant risk.

The tenants dispute that they smoked inside, and that they have caused a disturbance to other tenants or the landlords. As this is a home with multiple units, and several occupants, I find that the landlords have failed to provide sufficient evidence to support that the smoke was due to the tenants' smoking inside property. I find the landlords have not provided sufficient evidence to support that the tenants have adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupants to the extent that this tenancy should end, and therefore I cannot grant an Order of Possession on this basis.

I find that the landlords had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Under these circumstances, I am allowing the tenants' application to cancel the landlords' 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*.

As the landlords were not successful in their application, I dismiss their application to recover the filing fee without leave to reapply.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." The tenant applied for a reduction of rent for repairs, services or facilities agreed upon but not provided. The tenants testified that the home fails to meet the requirements of city bylaws, and that the landlords have failed to perform repairs to the rental unit, including the temperature of the water in their unit. The landlords dispute that there are any outstanding issues that they have not addressed. I am not satisfied that the tenants have provided sufficient evidence to establish that the landlords failed in their obligations to provide repairs. On this basis, this portion of the tenants' application is dismissed with leave to reapply.

The tenants expressed concern about the harassment from the landlords, including threats and the landlord's unauthorized entry into their rental unit. I find that landlords did not dispute that they have had confrontations with the tenants during this tenancy, one of which resulted in the tenants' son being so fearful that he had to find alternative housing for a month. The son testified in the hearing that he suffered a monetary loss as he had to pay rent during this time. As the tenants did not make a monetary application for this loss, I cannot consider a monetary order for compensation related to this incident as part of this application.

Although I am not satisfied that the tenants are entitled to an order to suspend the landlords' right to enter the rental unit, nor am I satisfied that the locks should be

changed, I find that the landlords must be reminded of their obligations under section 29(1) of the *Act* as stated below about entering the tenants' 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.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice dated July 7, 2018. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The landlords' applications are dismissed without leave to reapply.

The tenants' application for a rent reduction is dismissed without leave to reapply. The remaining portions of the tenants' application are dismissed.

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 5, 2018

Residential Tenancy Branch