



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, MNDCT, PSF, RP, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on September 21, 2018 (the "Application"). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated September 14, 2018 (the "Notice");
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- For an order that the Landlord make repairs to the unit or property;
- For an order reducing rent for repairs, services or facilities agreed upon but not provided;
- For compensation for monetary loss or other money owed; and
- For reimbursement for the filing fee.

The Tenants appeared at the hearing. The Landlord appeared at the hearing with the Advocate.

I advised the Tenants at the outset of the hearing that I would only consider the dispute of the Notice given rule 2.3 of the Rules of Procedure (the "Rules") which requires claims in an Application for Dispute Resolution to be related. I did not find the remaining issues sufficiently related to the issue before me which was the dispute of the Notice. The remaining issues, other than the request for reimbursement for the filing fee, are dismissed with leave to re-apply. This does not extend any time limits under the *Residential Tenancy Act* (the "Act").

I explained the hearing process to the parties who did not have questions when asked. The Tenants and Landlord provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Advocate confirmed the Landlord received the hearing package and Tenants' evidence and raised no issues in this regard. The Tenants advised they received the Landlords' evidence late. They had received the evidence October 23, 2018. I note that this is not late pursuant to rule 3.15 of the Rules which requires respondent evidence to be served not less than seven days before the hearing. In any event, the Tenants confirmed they had a chance to review the evidence and therefore I do not find the date the evidence was received to be an issue.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all relevant documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlords and Tenants in relation to the rental unit. The tenancy started July 20, 2014 and was for a fixed term ending July 31, 2015. The agreement is signed by one of the Landlords and one of the Tenants; however, the parties agreed both Landlords are landlords and both Tenants are tenants under the agreement.

The Notice was submitted as evidence. It is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of October 19, 2018. The grounds for the Notice are that the Tenants, or persons permitted on the property by the Tenants, have engaged in illegal activity that has damaged, or is likely to damage, the Landlords' property.

The Advocate advised that the Landlord served the Notice on the Tenants by registered mail on September 14, 2018. Tenant W.C. acknowledged receiving the Notice on September 17, 2018 but could not recall how it was sent.

The Advocate outlined the position of the Landlords which is as follows. The Tenants have repeatedly violated strata by-laws and have violated a city by-law. In July of 2017, the Tenants installed four air conditioners at the rental unit without permission which was a violation of the strata by-laws. In March of 2018, the Tenants violated the strata parking bylaw. In August of 2018, the Tenants stored dog feces in a container outside of the rental unit which is a violation of the strata by-laws and city by-laws.

The Advocate submitted the following. Under the tenancy agreement and attached Form K, the Tenants are obligated to comply with the by-laws of the strata and city. The violations are repeated and continuing violations. This allows the Landlords to serve the Tenants with the Notice pursuant to section 137 of the *Strata Property Act*.

The Advocate submitted that the violations amount to illegal activity. He submitted that installing air conditioners does damage the property. He acknowledged that the parking and dog feces issue does not damage the property and relied on section 137 of the *Strata Property Act* as grounds for issuing the Notice based on these violations.

I asked the Advocate to explain how installing air conditioners damages the property. He said the Tenants removed the windows and replaced them with carboard in order to install the air conditioners. The Advocate submitted that the carboard is not sufficient to keep out moisture. He also said that having cardboard in the windows poses a security risk to the property.

The Advocate could not point to any evidence submitted that shows damage caused to the rental unit or property by the installation of the air conditioners.

I asked the Tenants to focus their submissions on the issue of the air conditioners. Tenant W.C. testified that the Tenants did not remove windows to install the air conditioners, they slid the windows open. He said there is no damage to the rental unit from the installation of the air conditioners. He pointed to a letter from the strata in this regard.

I asked the Advocate if there was any evidence before me that the windows were removed rather than opened as stated by the Tenants. The Advocate pointed to a photo submitted as evidence. It is a photo of the outside of the rental unit which shows the four air conditioners installed in the windows of the rental unit.

I asked the Advocate how having cardboard in the window is different from the Tenants leaving the window open which he confirmed they are permitted to do. The Advocate submitted that it is different because leaving the window open is a temporary situation whereas the cardboard is more permanent and cannot be easily moved.

The Landlords submitted correspondence between the strata and the Tenants in relation to the violations noted above. The Landlords submitted photos in relation to the violations.

The Tenants submitted photos showing there is no damage to the rental unit from the installation of the air conditioners.

The Tenants submitted a letter from the strata stating that the issue was installing air conditioners without permission and not that there was illegal activity that caused damage to the rental unit.

Analysis

The Landlords were permitted to serve the Notice based on the grounds noted pursuant to section 47(1)(e) of the *Act*. The Tenants had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*.

I accept the undisputed testimony of Tenant W.C. that the Tenants received the Notice September 17, 2018. Based on our records, I find the Tenants disputed the Notice September 21, 2018, within the time limit set out in section 47(4) of the *Act*.

The Landlords have the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

I am not satisfied that the Landlords have established the grounds for the Notice.

As an arbitrator with the Residential Tenancy Branch, I have jurisdiction to apply the *Act*, not the *Strata Property Act*. Under the *Act*, the Landlords are only permitted to end the tenancy for cause under section 47 based on the specific grounds listed in that section. Here, the Landlords indicated that their grounds were illegal activity that “has caused or is likely to cause damage to the landlord's property”. This is the ground the Landlords must prove for me to uphold the Notice.

The Advocate acknowledged that the parking and dog feces issue did not cause, and were not likely to cause, damage to the rental unit or property. Even if the Advocate had not acknowledged this, I would not have found that either issue caused damage, or was likely to cause damage, to the rental unit or property given the nature of these issues.

The Advocate submitted that the installation of air conditioners did cause damage to the rental unit or property or was likely to cause damage to the rental unit or property. He based this on three points. First, that the Tenants removed windows in order to install the air conditioners. Second, that the cardboard used to replace the windows was not sufficient to keep moisture out of the rental unit. Third, that the use of cardboard posed a security risk to the rental unit.

The parties gave conflicting evidence about whether windows were removed to install the air conditioners. The Advocate pointed to a photo as evidence that the Tenants removed windows. This is the only evidence referred to by the Advocate in support of the Landlords' position on this issue. The photo does not show whether the windows were removed or open given the distance at which the photo was taken. I do not accept that the photo supports the Landlords' position that the windows were removed. I am not satisfied that the windows were removed given the conflicting evidence on this point and lack of evidence to support the Landlords' position. I do not accept that opening the windows caused damage or was likely to cause damage to the rental unit.

In relation to the remaining two points, I note that the air conditioners have been removed according to the Tenants and correspondence from the strata submitted as evidence. The Landlords submitted no evidence that the installation of the air conditioners caused any damage to the rental unit. There is no evidence before me that the installation caused moisture damage. There is no evidence before me that any security issues arose during the time the air conditioners were installed.

Further, I note that the strata issue with the air conditioners was not that they were installed but that they were installed without permission. The evidence is clear that the installation of air conditioners was not prohibited, it simply required approval.

I do not accept that placing cardboard above the air conditioners in the windows caused damage or was likely to cause damage to the rental unit or property based on the submissions and evidence on this point. A barrier remained between the outside and inside of the rental unit. I cannot see how having cardboard in the window raises

different concerns than the Tenants leaving windows open which the Advocate acknowledged they were permitted to do. I do not accept that the more permanent state of the cardboard results in a situation where the Landlords are permitted to end the tenancy over this.

In the circumstances, I am not satisfied the Landlords have proven the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful in this application, I grant them reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants are permitted to deduct \$100.00 from one future rent payment as reimbursement for the \$100.00 filing fee.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*. I grant the Tenants reimbursement for the filing fee. The Tenants are permitted to deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 06, 2018

Residential Tenancy Branch