



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On March 4, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated February 16, 2019.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. The parties testified that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

The parties testified that the tenancy began in November or December of 2015, and is on a month to month basis. Rent in the amount of \$1,000.00 is to be paid by the first day of each month. The Tenants paid the Landlord a security deposit on \$475.00.

There is no written tenancy agreement.

The Landlord issued a One Month Notice To End Tenancy For Cause to the Tenants by placing the notice in the Tenants mailbox on February 16, 2019.

The reasons for ending the tenancy provided in the One Month Notice are as follows:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*
- *Put the Landlord's property at significant risk*

Tenant has engaged in illegal activity that has, or is likely to:

- *Damage the Landlord's property*

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants testified that they found the One Month Notice in their mailbox on March 1, 2019, and applied to dispute the Notice on March 4, 2019.

The Landlord's agent provided testimony regarding the reasons why the tenancy should end. She submitted that the Landlord received complaints from the other occupants of the rental unit and from neighbors regarding a tent that was put up by the Tenants on the rental property.

The Landlord's agent testified that they asked the Tenants to move the tent, but the Tenants refused and stated that they are not obligated to move it. The Landlord testified that the Tenants were sent a letter asking them to remove the tent and when the Tenants did not do so, the Landlord issued the One Month Notice To End Tenancy for Cause. The Landlord provided a copy of a letter dated February 4, 2018, asking the Tenants to take the tent/ shelter down within 10 days. The letter indicates that the verbal agreement never allowed the tenants to use the backyard.

With respect to the reasons to end the tenancy provided within the One Month Notice, the Landlord's agent submitted that the tent is causing rats to come onto the rental property and live in the tent. The Landlord's agent testified that the tent is placed on an area of the rental property that is an easement and is not included in the Tenants' tenancy.

The Landlords agent submitted that the notice to end tenancy was predominantly issued due to the tent and the presence of rats; however, the Landlord also mentioned that they believe the Tenant is smoking cannabis in the rental unit. The Landlords agent testified that the Landlord did not observe the Tenants smoking in the rental unit.

In reply, the Tenant testified that he smokes cannabis due to medical conditions and has medical clearance to do so. The Tenant testified that he has never smoked cannabis inside the rental unit. The Tenants testified that there was a verbal agreement that there was no smoking permitted in the rental unit.

The Tenants testified that they live in the lower unit of the rental property. The Tenants submitted that they put up the shelter/ tent on their part of the yard. They testified that they have used the side of the property since the tenancy began and the tent has been up for two years. The Tenant testified that they checked with the city and there is no legal reason why they cannot have the tent there because it is a moveable item. The Tenants provided photographs of the yard.

The Tenants point out that there is no written tenancy agreement with the Landlord and they testified that there was no verbal agreement at the start of the tenancy where they were informed or agreed that they did not have use of this part of the yard.

In reply, the Landlords agent testified that she believes the tent has been up for less than two years.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord failed to prepare a written tenancy agreement at the start of the tenancy as required by section 13 of the Act.

The parties disagree about the terms and conditions of their verbal tenancy agreement. The Landlords suggest that the Tenants do not have use of the backyard and the Tenants submit that they have always used the yard and there were no terms or condition on the use of the yard. I find that it is reasonable that the Tenants have use of the back and side yard since they occupy the lower rental unit. I also accept their testimony that they have been using the yard since the day they moved in. I would

expect that the Landlord would have addressed the issue prior to now if the Tenants were not permitted to use the yard.

The Landlord failed to prepare a written tenancy agreement. Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The burden of proof rests on the applicant Landlord. I find that there is insufficient evidence from the Landlord that there was a term of tenancy that the Tenants may not use the yard of the rental property. I find that the Tenants have use of the yard and I accept the Tenants submission that the tent/ shelter is a moveable item, and therefore there is no issue with it being in the yard.

With respect to the reported problem with rats, I find that the Tenants are not responsible for the presence of rats simply because they have erected a tent/ shelter. I find that there is insufficient evidence from the Landlords that the Tenants are attracting rodents through any kind of negligence.

With respect to smoking of cannabis, there is no written tenancy agreement providing whether or not smoking was permitted in the unit or on the property. I accept the Tenants testimony that there was a verbal agreement of no smoking in the rental unit. The Tenants denied that they have ever smoked cannabis in the rental unit, and the Landlord testified that they have never observed smoking in the unit. I find that there is insufficient evidence that the Tenants have smoked in the rental unit.

The Landlords have provided insufficient evidence to support their reasons to end the tenancy as provided within the One Month Notice To End Tenancy For Cause dated February 16, 2019.

The One Month Notice To End Tenancy For Cause dated February 16, 2019, is cancelled.

The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlords to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to withhold the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Landlords have provided insufficient evidence to support their reasons to end the tenancy as provided within the One Month Notice To End Tenancy For Cause dated February 16, 2019.

The One Month Notice To End Tenancy For Cause dated February 16, 2019, is cancelled.

The tenancy will continue until 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: April 17, 2019

Residential Tenancy Branch