



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YORK DEVELOPMENTS LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for an order cancelling the One Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord to the tenants and for recovery of the filing fee paid for this application.

The tenants and the landlord's agents attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, question the other party, and make submissions to me.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to prove that they have cause to end this tenancy?

Are the tenants entitled recovery of the filing fee?

Background and Evidence

I was presented with undisputed evidence that this tenancy originally began on June 1, 1997. A copy of the written tenancy agreement was submitted into evidence.

The evidence presented was that the landlord served the Notice by mail on July 24, 2019, and the tenants confirmed receiving it on July 27, 2019. As the tenants' application was filed on August 6, 2019, I determined that the tenants filed within the required timeframes and the landlord proceeded first in the hearing to support the merits of their Notice.

Both parties submitted a copy of the Notice, which was dated July 24, 2019, and listed an effective end of tenancy of August 31, 2019.

The causes listed on the Notice alleged that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In support of their Notice, as to the first listed cause, the landlord's agent, YB, submitted that on April 9, 2019, the rental unit, or suite, directly below the tenants' rental unit experienced water coming from the light fixture. The landlord's agent submitted that the tenants did not allow the landlord's agent entry to their rental unit so that they could investigate the source of the water. The landlord's agent said he knocked on the door and tried to reason with the tenants.

The landlord submitted further that the tenants are always involving the police in landlord-tenant matters and video and audio recording their interactions. The landlord's agent submitted that on the day in question, the landlord's agent and their witness heard splashing and mopping inside the rental unit.

The landlord submitted that he brought a witness, who was the tenant in the rental unit below the tenants', but was denied access.

In response to my inquiry, the landlord's agent submitted that they did not serve the Notice to the tenants after the alleged incident, as they wanted to wait until all the paperwork was complete.

As to the second listed cause, the landlord's agent submitted that the tenants breached a material term of the written tenancy agreement which states that the landlord may enter the residential premises in the case of an emergency. The landlord's agent submitted that the tenants refused to compensate the landlord for the costs of the investigation of the flood in their rental unit caused by their "negligence and the repair of the suites below affected by the flood and investigation".

Landlord's agent EM said she feels intimidated by the tenants' behaviour, as they knocked loudly on her door on September 13, 14, and 16, after hours. EM said that the situation with the tenants leave her feeling stressed with having the police attend the residential property.

Tenants' response-

The tenants' submitted that they feel compelled to video tape their interactions with the landlord's agents, particularly, YB, due to past problems with him. Their problems have caused them to take their issues to dispute resolution at the Residential Tenancy Branch ("RTB") in past years and the police have made such recommendations.

Tenant GB said they only call the police when YB is around the residential property due to the past retaliatory actions by him.

The tenants submitted further that there has been flooding everywhere in the apartment building and that leaks are not an emergency and have never been with the landlord. The tenant submitted that they are being targeted by the landlord.

The tenant disputed that they were mopping up water and denied that the landlord's agent or their witness could have heard any sounds, as there clearly were none on the audio recording the tenants submitted. The tenant also questioned why the landlord would bring another tenant to be a witness at the time of the April 9, 2019, incident.

The tenant denied that the landlord's agent announced themselves when attempting to enter the rental unit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

While I have reviewed the extensive evidence submitted prior to the hearing and the oral evidence following a lengthy hearing, I refer to only the relevant evidence regarding the facts and issues in determining this Decision.

Where a tenant has properly filed an application disputing a landlord's Notice to end a tenancy, as is the case here, the onus is on the landlord to substantiate that they had sufficient cause on the day the Notice was issued to end this tenancy.

In this case, the landlord has claimed that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

First cause-

In this case, I find the landlord submitted contradictory evidence. On the one hand, the landlord stated they were denied access to the tenants' rental unit to investigate a flood situation and made other statements concerning the flood in the tenants' rental unit. On the other hand, their evidence mentions that the suite below the tenants' rental unit had a leak. The landlord's own documentary evidence, the plumber's report, mentions their investigation of the leak.

Further, the tenants presented audio evidence that the building manager, SM, confirmed that the tenants were not at fault in the water or leak in the suite below. Additionally, the landlord's own plumbing company investigating the leak in the suite below confirmed that the tenants' rental unit was not the source of the leak.

I find the landlord's own documentary evidence supports that when they provided the tenants with a proper written notice to inspect the rental unit, the tenants would have allowed that inspection had the plumbing company met their appointment time. In this case, they did not.

I also find that the landlord submitted insufficient evidence to support that the audio and video recordings by the tenants rise to the level of significant interference.

Finally and of the deciding importance, the incident in question occurred on April 9, 2019, and the Notice was issued to the tenants on July 24, 2019. I find that any concerns with this alleged interference was too remote in time to consider that it led to the issuance of the Notice on July 24, 2019, nearly four months later.

The landlord stated that the tenants continue to act inappropriately towards staff; yet again, this did not lead to the issuance of the Notice and the tenants disputed that this is the case.

Second Cause-

Residential Tenancy Branch Policy Guideline 8 states that a material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy and does not become material due to its inclusion in the written tenancy agreement. The landlord, in this case, bears the burden of proof.

To support this cause, the landlord submitted that the tenants breached a material term of the tenancy agreement as they failed to pay the plumber's expenses to investigate the "flood" in the suite below. I find failure to pay a plumber's bill is in no way a breach of a material or otherwise term of the tenancy agreement. Additionally, this written statement pertains to repairs to the rental unit, and there is nothing proven by the landlord that the tenants in this case must make ordinary repairs.

I point out that the plumber's invoice was dated May 9, 2019, and the landlord delayed until July 24, 2019, in issuing the Notice, further leading me to conclude that the causes listed were not of an urgent nature.

Overall, for all the above listed reasons, I find the landlords have submitted insufficient evidence to prove that on the day the Notice was issued, the landlord had cause to end this tenancy.

As a result, I find the landlord's One Month Notice to End Tenancy for Cause dated and issued on July 24, 2019, for an effective move out date of August 31, 2019, is not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

I allow the tenants recovery of their filing fee of \$100.00. I grant them a one-time rent reduction of \$100.00 from their next or a future month's rent payment in satisfaction of their monetary award, notifying the landlord of when this deduction is being made. The landlord may not serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when the tenants have made this deduction of \$100.00.

Conclusion

The Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the Act.

As the tenants' application was successful, and pursuant to section 72 of the Act, the tenants have been granted a one-time rent reduction of \$100.00 from a future month's rent.

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: October 2, 2019

Residential Tenancy Branch