



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On August 30, 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 August 21, 2019, ("the One Month Notice").

The matter was scheduled as a teleconference hearing. The Landlords and Tenant appeared at the hearing. The Tenant was assisted by an advocate. 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.

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.

Preliminary and Procedural Matters

The Landlord provided the Tenant with a copy of the Landlords' documentary evidence in digital format within a data stick.

The Tenant testified that she does not have the means to view the digital evidence prior to the hearing because her computer is a work computer and she is not permitted to use it to view personal files.

The Landlord testified that they did not check with the Tenant to confirm whether or not the Tenant had playback equipment or is otherwise able to gain access to the files.

Since the Tenant has not had an opportunity to review and respond to the Landlords' documentary evidence, and since the Landlords did not confirm that the Tenant could gain

access to the files as required in accordance with 3.10.5 of the Rules of Procedure, the Landlords' documentary evidence was excluded.

Issue to be Decided

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

Background and Evidence

Both parties testified that the tenancy began on September 1, 2018, as a one-year fixed term tenancy. Rent in the amount of \$1,300.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$650.00 and a pet damage deposit of \$500.00.

The Landlord served the One Month Notice to the Tenant by posting the Notice to the door on August 23, 2019. The Notice has an effective date (the date the Tenant must move out) of September 30, 2019.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

- *Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site property /park.*
- *Tenant has not done required repairs of damage to the unit/site.*

In the One Month Notice, the details of the cause are as follows:

Tenant has damaged property beyond reasonable wear and tear. Tenants dogs have affected the quiet enjoyment of nearby neighbors and resulted in RCMP/ SPCA being called on different occasions.

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 Tenant disputed the One Month Notice on August 30, 2019 within the required time frame.

The Landlords provided testimony that they live out of town. The Landlord Mr. K.M. testified that his father conducted a walk-through inspection of the rental unit and reported that there was damage to the rental unit and property. The Landlord testified that there was a damaged door; and scratched and dirty windows. The Landlord testified that the Tenant's dogs urinate and defecate on the floor inside the rental unit.

The Landlord testified that he sent text messages to the Tenant asking if the Tenant was planning to fix the damages to the door and yard. The Landlord testified that the Tenant has not repaired the door.

When the Landlord was asked why the Tenant needs to repair the door immediately and prior to the end of the tenancy, he replied that the Landlords want to sell the property and they had a realtor assess the property and inform the Landlord that the house is not in a presentable condition.

The Landlord testified that a term of the tenancy agreement requires the Tenant to maintain the yard. The Landlord testified that they have not sent a breach type letter pointing out the breach and providing a reasonable amount of time for the Tenant to correct the breach.

The Landlord testified that the Tenant's dogs are digging holes in the yard and disturbing neighbours. The Landlord testified that the police and SPCA have been to the rental unit.

The Landlord provided a witness, Mr. J.G. who is a Tenant listed on the tenancy agreement but has moved out of the unit and is living elsewhere. Mr. J.G. testified that he lived in the unit from September 2018 until March 2019. He testified that the Tenant's two dogs make a mess in the kitchen by urinating and defecating on the floor. He testified that the dogs run around dig holes and tear at a window. Mr. J.G. testified that he tried to repair the holes, but more holes would appear. Mr. J.G. testified that when the dogs would urinate and defecate on the floor, he would usually be the one to clean up the mess.

Mr. J.G. testified that the Tenant's son has an issue with wetting the bed. He testified that the home often smells of urine.

In response to the Landlord's testimony, the Tenant's advocate, Ms. M.M. submitted that the Tenant has a disability and hires a person to help clean the rental unit. She submitted that the house is not in rough shape. She submitted that the Landlord came to the rental unit on August 15, 2019, and asked the Tenant to clean, and the Tenant complied.

The Tenant provided documentary evidence of photographs showing the condition and state of repair of the interior and exterior of the rental unit.

The Tenant's advocate submitted that the Tenant informed the Landlord's father and the Landlord that she would repair or replace the door at the end of the tenancy; because it would make no sense to repair it during the tenancy with the dogs living there.

The Tenant's advocate submitted that one of the dogs was placed in a new home and there is only one dog living on the property. She submitted that the lawn has been re-seeded.

The Tenants advocate submitted that the Landlords' witness is a disgruntled ex-boyfriend. She submitted that the Tenant's son has a disability from a brain injury.

The Tenant's advocate submitted that the Tenant has not received any letters from the Landlord regarding extraordinary damage to the rental unit.

Analysis

In the matter before me, the Landlord has the onus to provide sufficient reason for ending the tenancy. Based on the evidence and testimony before me, I make the following findings:

I find that the Landlord has not provided sufficient evidence that the Tenant has caused extraordinary damage to the rental unit. The description provided of the damage does not meet a level that requires immediate repair or that a delay in having the damage repaired would put the Landlords' property at significant risk. There was no evidence that the door was not intact. The Landlords concern with the door appears to be related to its appearance, regarding the possible sale of the home. I find that the tenant still has a dog and it is reasonable the door be painted/repaired/replaced at the end of the tenancy.

There is no evidence that the Tenant is not cleaning up after her dogs when they urinate or defecate inside; in fact, the witness testified that he was the one who normally cleaned it up and often filled in holes that were dug in the yard. The Tenant also hires a person to help clean the unit.

The Landlords witness testimony regarding the Tenant's son is not evidence of damage to the rental unit.

The Landlords concerns about the Tenant or her dogs causing disturbances to neighbors was not a reason selected for the ending the tenancy. I note that the neighbors are not Tenants living on the Landlords property and that the covenant of quiet peaceful enjoyment does not apply to them.

I accept the Tenant's photographic evidence showing the condition of the rental unit and property and I find that the unit appears to be clean and undamaged.

The Landlord is holding a security deposit and pet damage deposit in trust that can be applied for if there is damage present at the end of the tenancy.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated August 21, 2019.

I order the tenancy to 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 Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The one Month Notice issued by the Landlord dated August 21, 2019, is cancelled.

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

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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 31, 2019

Residential Tenancy Branch