



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, OPC, FFL

Introduction

This hearing was convened in response to an application and amendments by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenants applied on September 15, 2021, with amendments made October 7, 2021, for:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order restricting the Landlord’s entry - Section 70.

The Landlord applied on November 8, 2021, for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim for compliance and restriction

of the Landlord's entry is not related to the matter of whether the tenancy will end, I dismiss these claims with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession and recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on December 1, 2017. At the outset of the tenancy the Landlord collected a security deposit of \$1,200.00 and a pet deposit of \$1,200.00. The Parties are unsure of the exact rental amount that is payable on the first day of each month. The Landlord served the Tenants with a one month notice to end tenancy for cause dated October 1, 2021 (the "Notice"). The Notice sets out an effective date of November 30, 2021. The reason stated on the Notice is that the Tenants have breached a material term of the tenancy agreement. The Notice sets out details that the Tenants have been leaving "stuff" on the common property over the years.

The Landlord states that they sent the Tenants a letter about the breach of a material term over a series of emails. The Landlord confirms that there is no mention in any of the emails that the Tenant's breached a material term and only sets out breaches of a few terms. The Landlord states that the Tenants have breached section 25 of the tenancy agreement entitled common areas.

Analysis

Section 47(1)(h) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Policy Guideline #8 sets out that a material term is a term that the parties both

agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. This policy further sets out the following:

To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Ending a tenancy is a serious matter. The Landlord's evidence, as set out in the details of the Notice, is that items being in the common area has been an ongoing issue for years. The length of time for such a breach does not support that the use of common areas is a material term of the tenancy. Further, in considering the requirements for the breach letter, given the Landlord's evidence that the Landlord informed the Tenants over a few emails that several terms of the tenancy agreement were being breached and did not send any letter setting out any breach of a specific material term, I find that the Landlord has not provided a breach letter as contemplated by the policy. For this reason, I find that the Notice is not valid for its stated reason. The Tenants are therefore entitled to a cancellation of the Notice and the tenancy continues. The Landlord's application is dismissed.

Conclusion

The Notice is cancelled, and the tenancy continues.

The Landlord's application is 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 Act.

Dated: January 31, 2022

Residential Tenancy Branch