



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

On January 21, 2023, the Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month Notice to End Tenancy for Cause, (the “Notice”) dated January 19, 2023. The matter was set for a conference call.

The Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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.

Issues to be Decided

- Should the Notice dated January 13, 2023, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenants application recorded that the tenancy began on October 10, 2019, that rent in the amount of \$1,300.00 is due on the first of each month and that the Landlord is holding a \$650.00 security deposit and a \$650.00 pet damage deposit for this tenancy.

The Tenants application recorded that the Landlord served the Notice to End tenancy to the Tenants by personal service on January 19, 2023, indicating that the Tenants were required to vacate the rental unit as of February 19, 2023. The Tenants provided a copy of the Notice into documentary evidence.

The reason checked off by the Landlord within the Notice is as follows:

- *Tenant has allowed an unreasonable number of occupants in the unit/suite.*
- *Tenant or a person permitted on the property by the Tenant has:*
 - *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*
 - *Seriously jeopardized the health or safety or lawful right of 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*
- *Tenant has caused extraordinary damage to the unit/site property /park*
- *Tenant has not done required repairs of damage to the unit/suite.*

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it.

The Landlord testified that they were ending the Tenants' tenancy due to damage to the rental unit. The Landlord confirmed that they had not submitted any documentary evidence to these proceedings.

The Tenants testified that they did not damage the rental unit, that they reported mold and wood rot on the door frame of the rental unit to the Landlord for repair. The Tenants

testified that the Landlord blamed them for this but that this was just an old door that has broken down over time and that they did nothing to damage the door.

Analysis

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

Pursuant to section 47 of the *Act*, the Tenants had ten days to dispute the Notice. As the Tenants received the Notice on January 19, 2023, I find the Tenants had until January 29, 2023, to file their application to dispute the Notice. I have reviewed the Tenants' application and note that they filed their application on January 21, 2023, within the statutory time limit.

During these proceedings, the parties offered conflicting verbal testimony regarding the damage at the end of the tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As stated above, it is the Landlord who holds the burden of proving cause sufficient to terminate the tenancy for the reasons given on their Notice. Therefore, it is the Landlord who must provide evidence over and above their testimony to establish the claims made in this Notice.

As the Landlord has failed to submit any documentary evidence to these proceedings, I find that the Landlord has not proven cause sufficient to terminate the tenancy for the reason given on the Notice they issued. Therefore, I grant the Tenant's application to cancel the Notice dated January 19, 2023, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Conclusion

The Tenants' application to cancel the Notice dated January 19, 2023, is granted. The tenancy will continue until legally 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: May 9, 2023

Residential Tenancy Branch