Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a One Month Notice to End Tenancy for Cause dated June 12, 2012, for an Order that the Landlords comply with the Act or tenancy agreement, for compensation for an overpayment of utilities and to recover the filing fee for this proceeding. RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that the Tenants' application for compensation is not related to the rest of the relief sought on their application and it is dismissed with leave to reapply.

During the hearing, the Landlords sought to introduce documentary evidence (photographs and e-mails) that had not been served on the Tenants. I find that it would be prejudicial to the Tenants to accept this evidence as they have had no opportunity to respond to it and as a result, it is excluded pursuant to RTB Rule of Procedure 11.5(b). I also advised the Parties that I would not accept any further documentary evidence or written submissions following the hearing. However following the hearing, the Landlords sought to introduce further documentary evidence. For the same reasons set out, this evidence has also been excluded.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Which party is responsible for maintaining a gravel driveway on the rental property?

Background and Evidence

This month-to-month tenancy started on August 1, 2007. Rent is $1,200.00 per month payable in advance on the 1st day of each month. On June 12, 2012, the Landlords served the Tenants by registered mail with a One Month Notice to End Tenancy for Cause dated June 12, 2012. The sole ground alleged on the Notice was "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The One Month Notice was accompanied by a letter of the

same date which listed a number of alleged breaches of the tenancy agreement. In their oral evidence at the hearing, the Landlords claimed that the breaches fell into three categories; ie. failing to grant access to the rental property to the Landlord's realtor, failure to maintain the rental unit and property in a reasonable state of cleanliness, and failure to obtain the consent of the Landlords to get a dog.

The rental property was listed for sale in March 2010. The Landlords sent an e-mail to the Tenants on May 30, 2012 advising the Tenants that their realtor wished to show the rental unit to prospective buyers on June 1, 2012. The Tenants responded that the requested date and time was not convenient for them and asked for 72 hours notice. The Landlords said the prospective buyer was only in town for the day in question an alternate time could not be arranged. The Tenants claimed that they were working 18 hours per day at that time and did not have the time to make the house presentable for a showing. The Tenants also argued that this was not an issue identified in the letter accompanying the One Month Notice.

The Landlords also claim that in the past few years, the Tenants have neglected the interior and especially the exterior of the rental unit with the result that it does not show well and to that end they claim this is the reason they have had only one showing in the 2 ½ years that the property has been listed for sale. The Landlords admitted that in their letter dated June 12, 2012, they did not ask the Tenants to rectify any of the alleged deficiencies because they wanted any repairs to be done professionally. The Landlords' witnesses (who are their former and current realtors) gave evidence that in their opinion the property appeared neglected in that from time to time, there were large weeds and the grass was either not cut or appeared not to have been watered. The Landlords' witnesses also claimed that the interior of the rental unit appeared cluttered, untidy and in a state of disrepair.

The Tenants denied that they neglected the yard and argued that the only area overgrown with weeds was the gravel driveway and that it was the responsibility of the Landlords to maintain. The Tenants noted that one of the Landlords' witnesses identified a problem with exterior window casings which they claimed was identified on as a deficiency on the condition inspection report at the beginning of the tenancy. The Tenants argued that the Landlords admitted that they believed their former realtor did very little to show or promote the property as was evident in his having only one showing in 2 years. The Tenants also argued that the Landlord's former realtor was not in a position to give an opinion about the condition of the rental unit because he had not seen the interior of it for quite some time. The Tenants further argued that the Landlord's current realtor was not in a position to give an opinion about the diminished condition of the rental property because she had only viewed it once on July 4, 2012 and had not seen the property since that time. The Landlord's current realtor claimed that she saw the property prior to the tenancy which she believed was 3 years ago (when she was an associate of the former realtor) however the Tenants claim this is not possible given that their tenancy started 5 years ago.

The Tenants claimed that since they received the Landlords' letter of June 12, 2012, they took steps to remove some of their belongings from the exterior of the rental unit, have made some repairs to the interior and cleaned high traffic areas of the carpets. The Tenants argued that they have only been asked twice in 2 ½ years to do a showing and that it has only been since June 2012 that the Landlords have claimed there were issues with the way they maintained the property. The Tenants claim that the real issue is their dispute with the Landlords over other issues such as their claim to recover an overpayment of utilities and the weeding of the driveway. The Landlords claim that approximately 2 years ago they moved to another community further away from the rental unit and did not have an opportunity to inspect it. The Landlords admitted that they have not inspected the rental property since July 4, 2012 when they had a contractor go through it with them in order to make a list of needed repairs.

The Landlords also claim that the tenancy agreement contains a term that the Tenants are not permitted to have pets without the consent of the Landlords. The Landlords said they gave the Tenants their consent at the beginning of the tenancy to have a small dog that was the size of a kitten (and waived payment of a pet deposit). However sometime later that Tenants got another dog without the Landlords' knowledge or consent. Consequently, in their letter of June 12, 2012, the Landlords advised the Tenants to remove the 2nd dog immediately or to pay a pet damage deposit on or before June 27, 2012. The Landlords said the Tenants did not respond to this demand so the Landlords sent another letter dated July 8, 2012 demanding that the Tenants remove the 2nd dog immediately.

The Tenants claimed that since they received the Landlords' permission to have one dog, they did not believe there was any issue with having a 2nd dog which they claim is only 10 pounds in size. The Tenants claim they were willing to pay a pet deposit if necessary but were waiting to do so pending the outcome of this hearing.

Analysis

Section 47(1)(h) of the Act says that "a Landlord may end a tenancy by giving a notice to end 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 has given written notice to do so."

At the hearing, the Dispute Resolution Officer advised the Parties of the definition of a material term which is set out in RTB Policy Guideline #8 (Unconscionable and Material Terms) at p 1 as follows:

> "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."

The Guideline states further that,

> "To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term."

The Parties' tenancy is written on the RTB standard form of tenancy agreement with one additional page as an addendum. The tenancy agreement states at clause 13 that the Landlord may enter a rental unit if the Landlord has given the Tenant at least 24 hours written notice of the entry. Neither party gave any evidence as to whether this clause was a material term or not. In any event, I find that the Landlords have not established a breach for this reason, firstly because it was not identified as a breach in their letter dated June 12, 2012. Secondly, the Landlords admitted that they have advised their realtor to schedule no further showings at this time. In other words, even if the Tenants were in breach of a material term of the tenancy agreement by failing to give their consent to a showing on June 1, 2012, I find that the Landlords have not given the Tenants an opportunity to correct this situation, because there have been no further showings requested.

The addendum to the parties' tenancy agreement (and Addendum to it) contain the following terms:

- **(#9 of the Addendum)** that the "*tenants must keep the premises clean and in good order*;"
- **(#18 of the Addendum)** that "*the Tenant agrees to mow the lawn and keep it watered. Also the tenant will look after the shrubs (water and weed them,*"
- **(#5 of the Addendum)** that "*any damage to any part of the building, appliances or grounds caused through the action, neglect or careless of the tenant or a guest shall be repaired and made good by the tenant under the direction of the landlord*."

Neither of the Parties gave any evidence as to whether these clauses were material terms or not. As stated above, even if they were material terms, I find that the Landlords did not offer the Tenants any opportunity to correct the alleged deficiencies. Furthermore**,** although the Landlords claimed that they wanted to have any repairs made by a professional, clause #5 of the addendum to the tenancy agreement clearly requires that they give the Tenants an opportunity to do so.

There was a lot of evidence and argument from the Parties as to who was responsible for weeding the gravel driveway on the property. Clause 5 of the Addendum does not address this specifically. The Landlords argued that the driveway is part of the yard and

therefore the Tenants are responsible for weeding it. The Tenants deny this and argued that the driveway is not part of the yard. RTB Policy Guideline #1 (Responsibility for Residential Premises) states at p. 7, as follows:

> "*Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of* ***weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds*** [emphasis added]*.*
>
> *The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.*"

I find that there is no authority for the Landlords' argument that the Tenants are responsible for weeding the gravel driveway. The above-noted Policy Guideline makes it clear that a Tenant is only responsible for weeding flower beds (if it is required by the tenancy agreement) and not the entire yard. Consequently, even if the gravel driveway was part of the yard as the Landlords argued, it would make no difference, as the Tenants are not responsible for weeding the yard (only the flower beds). For all of these reasons, I find that the Landlords cannot rely on the Tenants' alleged failure to maintain the property to support the ground selected on the One month Notice.

The addendum to the Parties' tenancy agreement contains a further term (#16) that "*in addition to the security deposit of one half month's rent, a pet damage deposit of one half month's rent per pet is required if pets are approved by the Landlord. No other animals (including birds or reptiles) will be permitted on the premises*." I find that the Tenants did get a 2nd dog without the consent of the Landlords and failed to remove it or pay a pet damage deposit as required by the Landlords in their letters dated June 12, 2012 and July 8, 2012. Consequently, I find that the Tenants are in breach of this term of the tenancy agreement. However, s. 47(1)(h) of the Act also requires that in order to warrant evicting a tenant for a breach of a term, the term must be a ***material term***.

Neither party gave any evidence as to whether this clause was a material term or not and as set out in Policy Guideline #8 reproduced in part above, "**i*t falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*"** In the absence of any evidence from the Landlords who bear the onus of proving this was a material term, I find that there is insufficient evidence to conclude that it was. Consequently, I find that the Landlords cannot rely on the Tenants' failure to remove an unauthorized dog to support they ground selected on the One month Notice.

As a final matter, the One Month Notice dated June 12, 2012 indicates an effective date was August 1, 2012. However, section 53(3) of the Act states as the effective date of a Notice must be stated as the day before the day rent is payable under the tenancy agreement and that if it is any earlier, then the effective date is amended to be the

earliest date that it can apply. Given that rent is due on the 1st of each month under the tenancy agreement, the effective date on the One Month Notice dated June 12, 2012 should have been the day before rent was due or July 31, 2012. By indicating instead August 1, 2012, the effective date of that Notice would have had to be amended under s. 53 of the Act to be the next soonest day it could apply within the longer notice period provided by the Landlord or August 31, 2012.

Conclusion

The Tenants' application is granted; the One Month Notice to End Tenancy for Cause dated June 12, 2012 is cancelled. The Tenant's application for compensation is dismissed with leave to reapply. As the Tenants have been successful in this matter they are entitled to recover from the Landlords the $50.00 filing fee they paid for this proceeding and I order pursuant to s. 72(2) of the Act that they may deduct this amount from a future rent payment when it is due and payable.

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: July 27, 2012.

Residential Tenancy Branch