



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing dealt with a tenant's application for authorization to end the tenancy earlier than the fixed term expiry date. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Have the tenants established a basis for ending the tenancy earlier than the expiry date of their fixed term tenancy agreement, and if so, on what date?

Background and Evidence

The fixed term tenancy commenced February 1, 2013 and is set to expire on January 31, 2014. The tenants are required to pay rent of \$1,070.00 on the 1st day of every month. The rental unit is a basement suite with the landlord's living on the upper level with their children.

Both parties acknowledged that this tenancy has not been successful and the landlord was agreeable to ending the tenancy early; however, the parties were in dispute as to when it is reasonable to end the tenancy.

The tenants seek authorization to end their tenancy by April 19, 2013 whereas the landlords were agreeable to ending the tenancy no earlier than May 31, 2013. As the parties could not mutually agree upon a date to end the tenancy I heard from both parties and have made a decision as to when this tenancy shall end.

The tenants cited the following reasons for wanting the end the tenancy early:

1. The tenants are not afforded reasonable privacy by the landlords including entry by the landlord without proper notice or consent. The tenants described how the landlord had permission to enter the unit February 1, 2013 in order to fix the cable connection. The tenants left the unit and while away the landlord went into the tenants' bathroom. On February 2, 2013 the landlord returned to the unit under the premise he had to continue working on the cable connection but once in the unit he demanded to see the bathroom and began screaming at the tenants about towels left on the bathroom floor. The tenants left the unit and the landlord took photographs of their bathroom. During a meeting with the landlord on February 5, 2013 the landlord told the tenants that their actions were causing the bathroom floor to rot and become mouldy and requested they sign a document taking responsibility for the damage.
2. The tenants are frequently disturbed by the landlord's children banging and running upstairs, starting at 6:00 a.m. most days and continuing throughout much of the day. The tenants assert that the noise disturbance started when the tenants refused to acknowledge damage to the bathroom floor was caused by them.
3. The landlords complained to the tenants that they leave the lights and TV on and that their dog barks all the time. The tenants are of the position the landlords must be entering the unit to determine that the lights and TV are left on as such cannot be determined from outside the unit. The tenant recorded her dog during the day and noted the dog does not bark for more than 15 minutes after she leaves.

The landlords responded to the tenants' allegations as follows:

1. The landlord observed approximately five litres of water in the crawl space and needed to gain entry into the tenants' bathroom to determine the cause of the water leak. The landlord submitted that the tenants had flooded the bathroom floor by not using the shower curtain properly. The tenants did not mop up the water adequately and were leaving the unit so the landlord did it himself. The landlord provided photographs of the tenants' bathroom but denied he asked them to sign a document to take responsibility for water damage. On February 9, 2013 the landlord installed glass shower doors so as to reduce the likelihood of water escaping onto the bathroom floor while taking a shower.
2. The tenants knew the landlords had children when they moved in. The landlords' children are cared for by the grandparents and the grandparents do their best to quiet the children but noise from children is to be expected.

3. The landlords denied entering the unit to determine whether the lights and TV are on in the rental unit. Rather, the landlords can hear the TV as it is very loud. The landlords also stated that they can tell when the tenant's alarm is activated from inside their unit.

During the hearing, I orally gave my decision that the tenancy shall end April 30, 2013. I have provided the reasons for my decision in the Analysis section of this decision.

Analysis

Section 44 of the Act provides for the ways a tenancy may end including s. 44(1)(f) which provides that a tenancy ends when the Director orders it ended. Having considered everything presented to me, with the delegated authority of the Director, I order the tenancy ends on April 30, 2013.

Under the Act, tenants are entitled to quiet enjoyment of their unit, including reasonable privacy and freedom from unreasonable disturbance and significant interference. I was presented opposing positions as to whether the landlord has violated the tenants' right to quiet enjoyment. I found the tenants' submissions straightforward and consistent. I found the landlords lacked credibility based upon the following considerations:

1. Upon my review of the photographs and upon consideration of the oral testimony, I find the landlord's submission that he had to enter the tenant's bathroom to investigate a significant water leak in the crawl space to be unlikely. I note that the photograph of the underside of the sub-floor shows evidence of an older water leak around the drain, complete with some signs of mould formation, and the photograph of the flooring in the bathroom appears to demonstrate that the vinyl floor is sealed with caulking. The photograph of the crawlspace floor does not depict signs of a recent leak of any significance. I find the photographic evidence inconsistent with the landlord's submission that water from a misplaced shower curtain resulted in a significant water leak into the crawl space as alleged by the landlord. Rather, the photographic evidence appears to indicate a water leak at the drain pipe that occurred prior to the commencement of this tenancy.
2. Upon review of the letter written by the landlords on March 4, 2013 I note the landlords complain of the tenants' TV and lights being on while they are not home. While I accept that a TV may be heard from outside the rental unit, I find I was not provided a reasonable explanation as to how the landlords determined the lights were also left on or a reason as to why they were making note of such.

In light of the above, I accept that the tenants have not been provided a reasonable amount of privacy and freedom from unreasonable disturbance at the hands of the landlord and the tenants' request to end this tenancy earlier than the fixed term of the tenancy agreement is reasonable in the circumstances.

I deny the tenants' request to end the tenancy by April 19, 2013 as I find this date earlier than that permissible under section 45(3) of the Act. Section 45(3) of the Act is a provision that allows the tenant to end a fixed term tenancy where a landlord has breached a material term of the tenancy agreement. The right to quiet enjoyment has been found to be a material term of a tenancy agreement by the courts. As the tenants filed their Application for Dispute Resolution in March 2013 I find the earliest date the tenants could have ended their tenancy under section 45(4) would have been April 30, 2013. Therefore, I order this tenancy ended as of April 30, 2013.

For clarity, the tenants are at liberty to vacate the rental unit sooner than April 30, 2013; however, they are responsible for paying the full amount of rent for the month of April 2013.

As this tenancy is ending it is expected that the landlord may seek entry into the unit for purposes of showing the unit to prospective tenants. Given the landlord's past breaches of the tenants' privacy, I ORDER the landlord to give the tenants 24 hours of written notice prior to entering the unit, as provided in section 29 of the Act. Below, I have reproduced the relevant portion of section 29.

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

I order the landlord to compensate the tenants for the filing fee they paid for this application. Provided to the tenants is a Monetary Order in the amount of \$50.00.

Conclusion

I have ordered the tenancy ended effective April 30, 2013. The landlord has been ordered to give the tenants 24 hour written notice prior to entering the unit in a manner that complies with section 29 of the Act. The filing fee has been awarded to the tenants and a Monetary Order has been provided to the tenants with this decision.

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: April 03, 2013

Residential Tenancy Branch