



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants to cancel a notice to end tenancy for cause and to recover the filing fee for making the Application.

An agent for the Landlord and both Tenants appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence prior to the hearing. At the start of the hearing I determined that the written evidence and the Notice of Hearing documents were served correctly in accordance with the *Residential Tenancy Act* (the “Act”) and the Rules of Procedure.

The hearing process was explained and the participants were asked if they had any questions. Both parties were given the opportunity to present their written evidence, cross-examine the other party and make submissions to me. While both parties submitted and presented a large amount of evidence, I have focused my attention to the matter at hand, being the reason the Landlord seeks to terminate the tenancy documented on the notice to end tenancy. Therefore, I only refer to the relevant portions of the parties’ evidence in relation to this reason in this decision.

Issue(s) to be Decided

Have the Tenants established that the notice to end tenancy ought to be cancelled?
Is the Landlord entitled to an Order of Possession based on a verbal request made during the hearing, pursuant to section 55(1) of the Act?

Background and Evidence

Both parties agreed that this tenancy started on October 1, 2013 on a month to month basis. A written tenancy agreement was completed and rent is currently payable by the

Tenants in the amount of \$950.00 on the first day of each month. The Tenants paid a \$475.00 security deposit on September 14, 2013 which the Landlord still retains. The Landlord did not complete a condition inspection report at the start of the tenancy but the Tenants completed one by themselves.

The Landlord testified that the Tenants were personally served with a 1 Month Notice to End Tenancy for Cause (the "Notice") on April 11, 2014. The Notice was provided as evidence for the hearing and shows that the effective date of vacancy is May 31, 2014 and the reason indicated by the Landlord for ending the tenancy on the second page of the Notice is because the Tenants have caused extraordinary damage to the rental unit.

The Landlord's agent was asked to present evidence in relation to the extraordinary damage claimed to be caused by the Tenants. The Landlord testified that the Tenants had:

- severely pruned a tree on the property;
- constructed a wall in the carport;
- removed a sprinkler system; and
- installed Telus communication lines into the wall of the property.

The Landlord's agent testified that these changes and damages to the rental unit were done without seeking the Landlord's consent to do so. In support of this, the Landlord's agent referred to a letter issued to the Tenants on January 30, 2014 in which the Landlord draws the attention of the Tenants to the fact that they had pruned a tree and constructed a wall in the carport without the consent of the Landlord.

The Landlord's agent also drew my attention to an addendum in the tenancy agreement which requires the Tenants to make no major changes without the Landlord's consent and policy guideline 1 to the Act which explains that a Landlord is generally responsible for major projects such as tree cutting.

The Landlord provided a photograph showing tree clippings as evidence of the severe pruning that had been done by the Tenants. The Landlord also provided a photograph of a sprinkler system which the Landlord's agent claimed the Tenants had moved to another part of the shed and was left unplugged. The Landlord's agent presented a photograph which shows two white cables and a grey cable going into the house and testified that the Tenants had installed two Telus lines without consent and had created two holes in the walls as a result of doing so.

The female Tenant led the testimony for the Tenants and disputes the reason on the Notice. The Tenant testified that when they entered into the tenancy with the Landlord it was on the basis that it was going to be a 'rent to own' situation and shortly afterwards the Landlord asked them to sign a written tenancy agreement indicating that it was now a 'rental situation'. However, the Tenant acknowledged that no rent to own agreement had been signed and that a written tenancy agreement had been signed by the parties which confirmed that the tenancy was under the jurisdiction of the Act. The Tenant submitted that because of their understanding at the start of the tenancy that it was a rent to own situation, this was the reason why they made changes to the rental suite without seeking the consent of the Landlord; however, the Tenants acknowledged that under the Act, they are aware they could not do this and had apologized for this.

In relation to the Landlord's claim that the Tenant had caused extraordinary damage presented during the hearing, the Tenant testified to the following. The tree had been pruned, but only three branches were cut and this was done because these were blocking the view onto the road which was preventing the Tenants and their neighbours from safely getting out of their driveway. The Tenant explained that the clippings in the Landlord's photograph show the small amount that had been trimmed and it was left outside in the garden for collection by the city.

The Tenant testified that when they took possession of the rental property, this included exclusive access to the car port and laundry room and came with a washer, dryer, deep freezer and refrigerator. The Tenant testified that the dryer was not working properly and as they had their own appliances they decided to use their own; however, the Tenants did not have enough space in the house to store their items because of these appliances and as a result had to store items in the car port and in the laundry room. The Tenant testified that in order to prevent their property in the car port from being stolen and damaged by the elements, they boarded-up one side of the car port with chip board which was simply screwed in and can be easily removed. The Tenant testified that they did this as it was a better solution than putting blue tarp over the car port which most residents in the neighbourhood did which in turn made the property look unsightly.

The Tenants testified that they did move the sprinkler control box testified to by the Landlord's agent because it was at risk of being damaged based on the way they were storing items in the shed. As a result, they moved the control box to make it more accessible and reduce the chance of it being damaged. The Tenant explained that they left it unplugged because it was the winter and it did not need to be on as they were responsible for water bills in the tenancy. The Tenant testified that the weather in their location has not given cause or justification for it to be turned back on but it will be turned on when the weather requires this.

In relation to the small holes claimed by the Landlord by damage from the Telus lines, the Tenant submitted that the utility provider had to put new cables in to meet code and they used the same holes that were previously used for the same utilities. The Tenant testified that the utility company could have installed them through the roof tiles instead of the wall but this would have likely resulting in more damage.

Analysis

I find that the Notice was issued to the Tenant in the correct form and contained the required contents as required by the Act and that it was served and received by the Tenants on April 11, 2014. As a result, I find that the Tenants disputed the Notice within the time limits afforded under section 47(4) of the Act. When a Landlord issues a Tenant with a Notice for the reason documented above, the Landlord must prove, on the balance of probabilities, the reason on the Notice for the tenancy to be ended.

As a result, I have considered the evidence of both parties carefully and I find that while the Landlord certainly has merit to a claim that the Tenants did not get consent from the Landlords to make changes to the rental suite and there may be likely damage to the property, I find that the Landlord has not provided sufficient evidence that these damages are **extraordinary** in nature.

The Landlord failed to provide sufficient evidence, such as photographs, of the 'wall' claimed to be constructed by the Tenants and how this caused extraordinary damage to the property. Therefore, I accept the evidence of the Tenants that the 'wall' was made of chip wood and was screwed in and can easily be removed at the end of the tenancy.

This is also the case for the Landlord's claim that the tree was severely pruned. The Landlord has failed to provide sufficient evidence in the form of comparative evidence that the tree had been **severely** pruned. In addition, the Landlord's single photograph of a small amount of clippings goes some way to prove the Tenant's testimony that only a small amount of the tree branches were removed to facilitate their access out of the rental property. I find that the evidence presented by the parties does not support a claim that the tree had been **severely** pruned.

In relation to the relocation of the sprinkler control unit, I find that the Landlord did not provide sufficient evidence that this caused extraordinary damage to the sprinkler system or the yard as a result of it being inoperable. I accept the Tenant's testimony that the sprinkler system had not been plugged-in because there was no need for water during this time of the year and I am satisfied that the Tenants will make this operable when this is necessary.

In relation to the small utility hole shown in the Landlord's photograph, I find that this is not evidence of extraordinary damage, rather a reasonable reason why such a hole would be created for the purposes of securing utilities by the Tenants which they had a right to install.

It is clear that the relationship between the parties is strained and while I attempted to encourage the parties to mutually agree to end the tenancy on their own terms, I find that the evidence presented by the Landlord for the reason to end the tenancy on this basis is not sufficient for me to legally order the tenancy to end. The Tenants presented sufficient evidence to demonstrate that they had no willful or intentional reason to damage the property and I find that the reason on the Notice selected by the Landlord is not appropriate for this situation.

However, the Landlord should seek to address the restoration of these unauthorised changes made by the Tenants through written requests and should look to the Act for other remedies to address these issues.

Conclusion

For the reasons set out above, I cancel the Notice dated April 11, 2014. The tenancy will continue until it is ended in accordance with the Act. As a result, the Landlord's oral request for an Order of Possession is denied.

As the Tenants have been successful in cancelling the notice to end tenancy, pursuant to Section 72(2) (a) of the Act, the Tenants may recover the \$50.00 filing fee by deducting it from a future installment of rent.

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: June 12, 2014

Residential Tenancy Branch

