



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated November 30, 2016
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I ordered that the Application for Dispute Resolution be amended to include the corporation as a respondent.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on November 30, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Landlord on December 2, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the Notice to End Tenancy dated November 30, 2016?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on October 7, 2016 when the parties entered into a fixed term tenancy that provided that the tenancy would end on April 30, 2017. The rent was \$825 per month. The Tenants paid a security deposit of \$250 and a pet damage deposit of \$200 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy sets out the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - ...
- Tenant has caused extraordinary damage to the unit/site or property/park

The landlord seeks to end the tenancy based on the following evidence

- The landlord produced a video showing one of the Tenants taking down a notice placed on the mail box of another Tenant. The landlord gave the Tenant a Notice dated October 26, 2016 demanding that the Tenants refrain from such action in the future.
- The landlord provided evidence that the tenant broke the front door handle when they forcefully ripped it out of the door around 2:00 a.m. on November 30, 2016. The tenants were returning from the hospital. They had forgotten their wallet and keys in their rental unit. They asked another tenant to let them in but he refused. The tenants attempted to force open the front door which resulted in the breaking of the handle. They gained access to their unit through their balcony by climbing up the walls. The Tenants paid the \$50 charged by the landlord for the repair of the door handle shortly after this occurred.
- The landlord takes the position this is an act of vandalism. They ended up going to the hospital because they were high on marijuana.
- The landlord further testified the tenants broke the siding when they tried to gain access but they have not issued a bill for the damage.
- The landlord testified the male Tenant damaged a cupboard door in the hall after the bar in the cupboard broke when he punched a hole in it.
- The landlord relies on the Crime Free Addendum to the tenancy agreement and in particular on the provision agreeing not to smoke marijuana.

The Tenants gave the following evidence:

- The tenant is completing her studies and wants to remain in the rental unit until the end of the school year at the end of April.
- Prior to entering into the tenancy they asked the landlord if it was permissible to smoke marijuana in the rental unit and he told them it was okay provided no one complained.
- They had to go to the hospital because of a problem with the marijuana they had been sold by another occupant in the rental property. Both of the tenants had forgotten their keys and wallet. They arrived back from the hospital at around 2:00 a.m. on November 30, 2016. They asked a neighbor who was up if he would open the front door but he refused and grabbed a sword. They admitted trying to force the front door open. They gained access by climbing up the balcony and paid the taxi cab driver from the money in their wallet. They notified the landlord and paid the \$50 to the landlord for the cost of repair.

- The tenants testified the damage to the siding is small and they are willing to pay the damage they have caused.

Analysis:

The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.

The evidence produced by the landlord was not complete. In particular:

- The landlord failed to produce evidence from other occupants in the rental unit.
- The materials produced by the landlord state they are relying on closed circuit video camera evidence. The landlord produced some still photographs which was admissible. However the tenant failed to produce the video evidence stated in his materials and I was not able to view the video of the incidents.

I determined that while the Tenants have acted inappropriately the evidence falls short of establishing sufficient evidence to end the tenancy for the following reasons:

- I determined the landlord failed to prove the tenants caused extraordinary damage. The cost to repair the front door handle was \$50 which was paid the Tenants shortly after the damage occurred. In view this is not extraordinary damage. I do not accept the submission of the landlord that the extraordinary damage contained in the Act refers to how the damage was done. The landlord failed to prove the tenants broke the handle intending to cause damage to the landlord. The damage was caused by the negligence of the Tenant and they paid for shortly after it was done. The other damage relied on by the landlord does not amount to extraordinary damage.
- The landlord failed to produce sufficient evidence that the Tenants have significantly interfered with or unreasonably disturbed another occupant in the rental unit. The landlord alleged he has received complaints from other occupants. However, those occupants did not testified at the hearing or provide a written statement.
- The Notice to End Tenancy alleges the Tenants have significantly interfered with or unreasonably disturbed the landlord. Certainly, the ill-fated attempt to get into the front door and the damage caused is a disturbance. The landlord failed to prove this amounts to a significant disturbance.
- The landlord alleged the Tenants have breached the Crime Free Addendum by smoking marijuana. The tenants testified they asked the landlord prior to the start of the tenancy if they could smoke marijuana in their rental unit and the landlord said it was okay provided he did not get complaints. The tenants stated they have been medically prescribed marijuana. The landlord did not dispute this testimony at the hearing. In any event, the landlord failed to prove that they have been significantly interfered with or unreasonably disturbed by this conduct.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated November 30, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The Tenants have been successful with this application. However, they have been partially responsible for the situation that gave rise to the issuance of the Notice. I ordered that the landlord pay to the Tenants one half of the cost of the filing fee in the sum of \$50 such sum may be deducted from future 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: January 09, 2017

Residential Tenancy Branch