



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, LPE

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Cause, for repairs to the unit, site or property and to set conditions of the Landlord's right of entry to the rental unit.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on August 17, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an Order to cancel the Notice to End Tenancy?
2. Are there repairs to be made to the unit, site or property?
3. Has the Landlord entered the rental unit in accordance to the Act, regulations and tenancy agreement?

Background and Evidence

At the start of the hearing the Landlord's support person V.C. said the Landlord is deaf so she would interpret for her. As well the Landlord's other support person K.C. said this type of proceeding is extremely difficult for the Landlord as she can not see what is happening and she relies of body language and lip reading to understand things. The Arbitrator said he would allow extra time for the Landlord's support persons to interpret and to assist her.

This tenancy started on June 1, 2017 as a fixed term tenancy with an expiry date of May 30, 2018. Rent is \$2,500.00 per month payable on the 2nd day of each month. The Tenants' Advocate said the tenancy agreement is confusing about the security and pet deposits. The security deposit is for the equivalent of a full month's rent of \$2,500.00 which is not legal under the Act and the pet deposit is checked off as not applicable but

it indicates the amount of \$1,250.00. Further the tenancy agreement says the amounts are to be paid by June 2, 2017. The Advocate continued to say the pet deposit referred to a dog which the Tenants never brought to the rental unit. The Advocate said the Tenants paid the corrected amount of \$1,250.00 for the security deposit but did not pay the pet deposit as they understood it was only due if they had a dog. The Landlord said the Tenants only paid the pet deposit of \$1,250.00. The Advocate said the security deposit was paid in two payments with the last payment being made on July 17, 2017. No receipts for the security or pet deposits were submitted into evidence.

The Landlord said she served the Tenants with a 1 Month Notice to End Tenancy for Cause dated July 30, 2017 by personal delivery on July 30, 2017. The Effective Vacancy Date on the Notice is August 30, 2017. The Landlord said the Tenants are living in the unit and the Landlord said she wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenants have been repeatedly late with rent payments, illegal activity has adversely affected the quiet enjoyment, safety, security or physical well-being of another occupant and the Tenants have not paid the security or pet deposit within 30 days as required in the tenancy agreement.

The Landlord said the incidents that lead to the issuing of the 1 Month Notice to End Tenancy are as follows:

- 1). The Landlord said the Tenants have been late with the rent payment or had NSF cheques on a number of occasions but the Landlord had difficulty remembering what months the Tenants were late and the Landlord had no NSF cheques to support her testimony. The Landlord said she did not understand that she had to submit evidence to support her claims. It was noted the Landlord did not submit any evidence or information except her testimony at the hearing.

The Tenants' Advocate said the June, 2017 rent was paid on time, the July, 2017 rent was paid July 6, 2017 because the Landlord changed the payment method from e transfer to cheque pick up. In addition to the change in payment method the bank did not process the e transfer so the Tenants said there was a delay in recovering the e transfer money for the replacement cheque. The Advocate said the August, 2017 rent was paid on July 27, 2017 and the Tenants gave the Landlord post dated cheques for September, October and November, 2017. The Tenants' Advocate continued to say the Landlord requested new cheques from the Tenants because she mistakenly damaged the cheques given to her. The Advocate said any issues with the rent not being paid on time were the responsibility of the Landlord not the Tenants.

The Landlord said she thought the Tenant's cheques had bounced so the rent was not paid. The Tenant R.M. said when they reissued cheques she put stop

payments of the previous cheques although they believe the Landlord has cashed both cheques for October, 2017.

2). The Landlord said the second reason on the 1 Month Notice to End Tenancy for Cause is that the Tenants have engaged in illegal activity that have put her safety at risk. The Landlord said the Tenant R.M. yelled and screamed at her and then the Tenant R.M. approached her in a threatening way while the Landlord was in her truck. The Landlord said when the Tenant R.M. put her head in the window she blocked her with her arm and hit Tenant R.M. in the head. Tenant R.M. said this was a bad incident and the Police were called but no charges were laid and the Police said it was a situation of she said/she said and it would be thrown out of court. The Landlord said she does not like being yelled at and intimidated by the Tenant R.M. Tenant R.M. said she is not living at the property any more because of the incidents with the Landlord.

Further the Landlord said the Tenants were smoking marijuana in the rental unit but the Landlord did not provide any corroborative evidence to support this. The Tenants said they did not smoke marijuana.

3). The Landlord continued to say with the help of her interpreter that the security deposit is not paid and that is grounds to end the tenancy. The Tenants' Advocate said the deposit information is confusing on the tenancy agreement and the Tenants believe they paid the security deposit of \$1,250.00 and the pet deposit was not required because the dog was not part of the tenancy. The Landlord said the pet deposit was for any pets and the Tenants had two cats.

It should be noted there are no receipt submitted for payment of the deposit.

At this point in the Hearing the Tenants' Advocate said the Tenants do not want to continue the tenancy and as the Landlord wants to end the tenancy the Tenants have a settlement offer for the Landlord. The settlement offer is as follows:

- 1). The Tenants agree to end the tenancy on December 31, 2017.
- 2). For agreeing to end the tenancy before the end of the fixed term of the tenancy agreement of May 30, 2018, the Tenants are requesting compensation for the month of December, 2017 of no rent or free rent for December, 2017.
- 3). If the Landlord accepts this settlement proposal the Tenants will drop the additional claims for repairs and to set condition on the Landlord's right of entry into the rental unit in this application and the Tenants agree to no additional claims will be made by either the Tenants or the Landlord regarding this tenancy.

The Tenants agreed this would be the settlement they could accept.

The Landlord said she needs the rent paid and she declined the Tenants settlement offer.

The Tenant's Advocate said in that case the Tenants are requesting the Landlord be order to repair the plumbing in the house as only one of the three bathrooms is working. As well the appliances that were in the house when it was showed before the tenancy started were removed and the appliances in the house now are not working correctly. The Tenants are requesting the appliances be repaired or replace with the appliances that were originally shown with the rental unit.

Further the Tenants said the Landlord enters the unit without proper notice and she has entered the property late at night. The Tenants are requesting an order to restrict the Landlord's right of entry to the rental unit.

The Landlord said that the master bathroom did not work at the start of the tenancy and the Tenants knew that so it does not have to be repaired. The Landlord said that she did remove her new stainless steel appliances before the Tenants moved in because she did not want them to be damaged. The Landlord said she does not enter the rental unit at night as the Tenants said.

In closing the Tenants Advocate said she would like the opportunity to write a settlement proposal to give to the Landlord so that they can continue to negotiate an end to this tenancy.

The Landlord said in closing that she does not want to continue the tenancy but she wants the Tenants to pay the rent.

The Landlord's support person V.C. said this has been very difficult for the Landlord as she is deaf so it is very hard for her to understand what is happening when she cannot see the people she is communicating with. .

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenants and the Landlord. The Tenants' Advocate suggested a settlement agreement to end this tenancy, but the Landlord did not accept the proposal. Consequently the parties will abide by the following decision.

With regard to the 1 Month Notice to End Tenancy for Cause the first reason on the Notice to End Tenancy is repeatedly late rent payments. The Landlord has not provided any evidence to support her claim the Tenants have been late with any payments. The Tenants provided three copies of cashed cheques and an explanation that any rent payments that were late were a result of the Landlord's action. First the Landlord changed the payment method from e transfer, which the Tenants had sent to the Landlord, to payment by cheque. This rent payment was delayed from July 2, 2017 to

July 6 2017. Further the Tenants said the June and August, 2017 payment were on time or before the due date and the remaining rent payments were made by post dated cheques which the Landlord damaged and they had to replace. I accept the Tenants' evidence and testimony that there has not been repeatedly late rent payments caused by the Tenants.

The second reason on the 1 Month Notice to End Tenancy for Cause is that the Tenants have engaged in illegal activities. Both parties testified that the Police were called but no charges were laid. Consequently I find the Landlord has not proven that the Tenants were engaged in illegal activities. Further the Landlord said the Tenants were smoking marijuana in the rent unit and the Tenants said they did not. The Landlord has the burden of proving her claims and when it is just one party's word against the other party's word that burden of proof is not met.

With regard to the third reason for the Notice to End Tenancy of the security deposit not being paid within 30 days; I find the tenancy agreement is confusing. Section 19 of the Act says a security or pet deposit can not be more that the equivalent of half a month's rent. In this situation that means that any one deposit can only be \$1,250.00. Both parties agreed a deposit of \$1,250.00 was paid on July 17, 2017. The Tenants said it was paid late because of the confusion on the tenancy agreement and the Landlord said the pet deposit was paid but the security deposit was not paid. The Landlord indicated the security deposit was for \$2,500.00 and it was not paid. The amount requested by the Landlord for the security deposit of \$2,500.00 is not allowed under the Act. Consequently the tenancy agreement is incorrect regarding the security deposit amount and I accept the Tenants' testimony that they paid the deposit late because of the confusion. Further the pet deposit is checked of as "not applicable" and then an amount of \$1,250.00 is written in as the pet deposit amount. The Tenants gave testimony that the pet deposit was for a dog not the two cats that they own so they thought the pet deposit was only payable for the dog. The tenancy agreement submitted by the Tenants has an addendum which indicates the pet deposit is for two cats and one dog. Further no receipt for the deposit was submitted by the Landlord and there is no evidence submitted that by the Landlord indicating the Tenants had not paid the deposits as the Landlord wanted prior to the Notice to End Tenancy for Cause. Given the confusion in the tenancy agreement about the security and pet deposits and on the balance of probabilities I find the Landlord has not met the burden of proof to establish grounds that the Tenants have not paid the security deposit and that a pet deposit was required. It is the Landlord's responsibility to clearly and accurately complete a tenancy agreement at the start of any tenancy. I find the Landlord did not complete the deposit information in a clear and accurate way. Consequently the deposit information in the tenancy agreement is not enforceable. .

I find in favor of the Tenants' application and I cancel the 1 Month Notice to End Tenancy for Cause dated July 30, 2017. Further I order the tenancy to continue as stated in the tenancy agreement.

With regard to the Tenants application for repairs to the plumbing I accept the Tenants testimony that only one of the three bathrooms are working correctly. I should be noted the Landlord said she knew the master bathroom was not working. Therefore I order the Landlord to hire a professional plumber agreed to by the Tenants to first inspect the plumbing in the rental unit and then repair it.

Further with regards to the appliances in the rental unit I find it inappropriate to exchange appliances that have been shown with the unit and then not provided the appliances with the rental unit. I order the Tenant to remove the existing appliances and replace them with the appliances that were originally in the unit on showing and agreed to by the Tenants.

In support of the orders to repair the plumbing and replace the appliances I order that the rent is reduced by \$250.00 for each month that the plumbing repairs are not done and \$250.00 for each month that the appliances are not replaced. The total rent reduction is \$500.00 until the repairs and replacements are completed.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated July 30, 2017 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

I order a rent reduction as stated above in a total amount of \$500.00 until the repairs or replacements are completed.

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: November 07, 2017

Residential Tenancy Branch