



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOCIETY OF H.O.P.E. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant AB primarily spoke on behalf of the two co-tenants. The corporate landlord was represented by its agents.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the evidence I find that all documents were served on the respective party in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for their application from the landlord?

Background and Evidence

The parties agreed on the following facts. This tenancy began in September, 2009. The current monthly rent is \$1,310.00 payable on the first of each month. The rental unit includes a carport area visible to the street. In or about September, 2018 the tenants built and installed a wooden planter in the carport area. The landlord issued several warning letters and engaged the tenants in discussion about the planter. The landlord issued letters on October 15, 2018, November 8, 2018 and January 7, 2019 informing the tenants that the planter must be removed to comply with the provisions of the Tenancy Agreement. Copies of the letters and agreement were submitted into documentary evidence.

As of the date of the hearing the planter has not been removed. The tenants submit that the warning letters received from the landlords indicate that they are in violation of different portions of the Agreement in each letter. The tenants further submit that they have been given no indication as to what size and configuration of planter is acceptable so they are hesitant to replace the planter without clear instructions.

The landlord gave evidence that the Agreement prohibits any items from being stored in the carport area but allowances are made within reason. The landlord's agent WT testified that storing large planters in the carport area creates an obstacle for maintenance workers, may be a fire hazard and sets a precedent with the other residents in the neighborhood. The agent said that they are hesitant to specify the size of planter that would be considered acceptable as there may be other residents who currently have planters or objects that exceed that size but have been permitted to use them.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the present case the landlord submits that the tenants breached a material

term of the tenancy agreement by placing a large planter in the carport area of the rental suite. The landlord gave evidence that the agreement prohibits any items from being placed in the carport area but allowances are made within reason. The landlord submits that the size of the current planter exceeds reasonable limits, is more in the nature of a fixture and violates the tenancy agreement.

The parties agree that the tenant has been issued multiple warning letters and advised to remedy this breach within a reasonable time. The parties agree that the tenants have not corrected the breach by removing the planter. The question at hand is whether the tenants' placement of the wooden planter is a breach of a material term of the tenancy such that it gives rise to a basis to end the tenancy.

Residential Tenancy Policy Guideline 8 defines a material term as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. The letters issued by the landlord cite various portions of the tenancy agreement prohibiting the storage of items in the carport. The landlord gave evidence that some planters are allowed in the carport at the discretion of the landlord, within reason. The parties gave evidence that other residents in the neighborhood have been permitted to place smaller planters and other objects in their carports. I find that a prohibition on storage of items that is not uniformly enforced and can be approved at the discretion of the property manager cannot be considered a material term. For a term in an agreement to be considered truly material it cannot be open to the discretion of the parties to allow its breach under certain circumstances. The nature of the discussions between the parties, and the evidence that other residents are permitted to place items in the carport in some circumstances, leads me to conclude that this term is not a material term so crucial to the tenancy agreement that its breach gives rise to an end of the tenancy.

As I find that the tenants have not breached a material term of the tenancy I do not find that there is a basis for this tenancy to end. Consequently, I allow the tenant's application and cancel the 1 Month Notice.

As the tenants' application was successful the tenants may recover the filing fee for this application. As this tenancy is continuing the tenants may recover their \$100.00 filing fee by deducting that amount from their next scheduled monthly rent payment.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenants may make a one-time deduction of \$100.00 from their next scheduled rent payment in full satisfaction of the monetary award in their favour.

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: March 21, 2019

Residential Tenancy Branch