Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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 One Month Notice to End Tenancy for Cause, pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the tenants' application for dispute resolution was personally served on the landlord; however, neither recalled on what date. I find that the tenants' application for dispute resolution was served on the landlord in accordance with section 89 of the *Act.*

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenants' application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in July of 2017 and is currently ongoing. Monthly rent in the amount of $1,900.00 is payable on the first day of each month. A security deposit was not paid by the tenants to the landlord. This was an oral tenancy agreement. A move in condition inspection report was not completed.

Both parties agree that on May 10, 2019 the landlord personally served the tenants with a One Month Notice to End Tenancy for Cause with an effective date of June 30, 2019 (the "One Month Notice").

The One Month Notice states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that he served the tenants with the One Month Notice for the following reasons:

- tenants failed to remove trampoline and children's play structure within a reasonable time after receiving written request for same; and
- tenants failed to remove pond within a reasonable time after receiving written request for same.

Both parties agreed that the tenants had a trampoline and child's play structure on the lawn of the subject rental property for approximately two years.

The landlord testified that when he was renewing his home insurance his insurance agent told him that he would be liable if anyone was hurt on the trampoline or play structure located at the subject rental property. The landlord entered into evidence a one page except from his insurance policy which states his personal liability coverage. Trampolines and play structures are not mentioned.

The landlord testified that he personally delivered the tenants a letter on May 2, 2019, dated May 1, 2019 which requests that the tenants remove the trampoline and children's play structure due to the need to repair the lawn from damage done from the above items and due to liability issues. The May 1, 2019 letter also requested the tenants to provide proof of rental insurance. The letter dated May 1, 2019 was entered into evidence. The above testimony was not disputed by the tenants.

The landlord entered into evidence black and white photographs of the lawn at the subject rental property which he stated showed black and brown spots. The landlord also entered into evidence black and white photographs which he testified showed that the lawn was green prior to the tenants moving in.

The landlord testified that on May 8, 2019 he personally delivered the tenants a letter dated May 7, 2019 which requested the tenants to remove their pond because it attracted skunks. The letter dated May 7, 2019 was entered into evidence. The tenants did not dispute the above testimony.

The landlord testified that on May 8, 2019 he personally delivered the tenants a letter dated May 7, 2019 which states that the tenants have still not removed the trampoline and other belongings from the yard of the subject rental property. The letter continues to state that if removal is not done, the landlords may have to ask for monetary compensation to hire out the repairs as the landlord has taken May 6-12, 2019 off of work to do the repairs himself.

The landlord testified that the trampoline, play structure and pond were removed on May 11, 2019, after the One Month Notice was served on the tenants.

The tenants testified that the trampoline did not damage the grass and that the grass was damaged from level 2 and level 3 water restrictions. The tenants testified that they regularly moved the play structure to prevent the grass from being permanently damaged but acknowledged that the play structure made an indentation.

The tenants testified that many other people in the neighbourhood have ponds and denied that their pond attracted the skunks.

Analysis

I find that the One Month Notice was served on the tenants in accordance with section 88 of the *Act.*

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

I find that the landlord has failed to prove what impact the tenants' trampoline has on his liability insurance. Other than his oral testimony, the landlord only entered into evidence a portion of his insurance policy which states what his liability insurance coverage is. The landlord did not enter anything into evidence stating the impact of the tenants' trampoline on his insurance.

I find that the landlord has failed to prove that the tenants' trampoline and play structure damaged the grass. At the beginning of the tenancy the landlord did not complete a move in inspection report and so there is no documentation to refer back to regarding the state of the lawn at the beginning of the tenancy. I find that the photographs entered into evidence are of little to no value as they are not dated and are in black and white. It is not possible to determine the colour of the grass in black and white photos. I also

note that damaged grass is not a significant enough to warrant an eviction under section 47(1)(d)(i) of the *Act*.

I find that the landlord has failed to prove that the tenants' pond attracted skunks. No reports from pest control personnel or other authorities were entered into evidence.

I find that the tenants removed the trampoline, pond and children's play area within a reasonable time of being requested to do so

I find that the landlord has failed to prove that the actions of the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. I therefore find that the One Month Notice is of no force or effect.

As the tenants were successful in their application, I find that they are entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72 of the *Act.*

Section 72(2) states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenants are entitled to deduct $100.00, on one occasion, from rent due to the landlord.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The tenants are entitled to deduct $100.00, on one occasion, from rent due to the landlord.

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 27, 2019

Residential Tenancy Branch