



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for an order cancelling a notice to end tenancy for cause, and to recover the filing fee from the landlord for the cost of this application.

The tenants both attended the conference call hearing and gave affirmed testimony. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on January 11, 2011, the landlord did not attend the conference call hearing.

All testimony and information provided by the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?

Background and Evidence

The tenants testified that this month-to-month tenancy began on April 1, 2009 with one of the tenants, and the other tenant moved in on a later date. The tenants are sisters. The landlord did not complete a tenancy agreement, however the tenants stated that rent in the amount of \$625.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. The landlord attends at the rental unit on the 1st day of each month, or in some cases a day or two later, to collect rent.

On March 22, 2009 the landlord collected a security deposit from the first tenant in the amount of \$325.00 as well as a pet damage deposit in the amount of \$325.00. When the second tenant moved in, the landlord collected another \$325.00 from that tenant for a security deposit. All deposits are currently held in trust by the landlord.

The tenants further testified that on December 2, 2010 a fire inspector attended the rental unit to inspect the suite. A few days later a bi-law enforcement officer attended, and the tenants were present when the officer told the landlord that the smoke detector and breaker switch in the closet were to be repaired. The landlord returned the same day with a new smoke detector and stated that she would return at the end of December to fix the breaker switch.

On January 2, 2011 the landlord sent her mother to the rental unit to collect the rent, and the tenant who paid it asked her to make out a receipt, which she did. The landlord's mother returned later that day and served the tenants personally with a 1 Month Notice to End Tenancy for Cause, a copy of which was provided in advance of the hearing. That notice states that the rental unit/suite must be vacated to comply with a government order. The tenants testified that they were not provided with a copy of any government order requiring the tenants to vacate the rental unit. Further, the notice to end the tenancy is dated December 31, 2010 with an expected date of vacancy of January 31, 2011. A note also appears on the bottom of the form that states: "Hand Received January 2, 2011" although it's not clear if it was added by the landlord or the tenants. The notice also contains an address for the landlord, which the tenants have testified is the address that the Tenant's Application for Dispute Resolution and notice of hearing package was sent to.

Analysis

The *Residential Tenancy Act* states that a landlord may end a tenancy by giving notice if certain circumstances apply, one being that the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority. The Act further states that:

47 (2) A notice under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In the circumstances, and in the absence of any evidence to the contrary, I find that the tenants were served with the 1 Month Notice to End Tenancy for Cause on January 2, 2011, and therefore, the effective date of the notice cannot be earlier than February 28, 2011 under the *Act*.

I further find that the tenants have served the landlord with the Tenant's Application for Dispute Resolution and notice of hearing documents to the address provided by the

landlord on the notice to end tenancy. Therefore, the tenants have established that the landlord was served in accordance with the *Act*.

In the circumstances, I further find that the landlord was ordered to make repairs to the rental unit by the bi-law enforcement officer and perhaps the fire inspector, not evict the tenants. I therefore find that the notice to end tenancy has not been issued in accordance with the *Act* and the notice must be cancelled.

The evidence of the tenants is that the landlord has charged the tenants more for a security deposit and pet damage deposit than permitted under the *Act*. Because I do not have an application before me by the tenants with respect to any overpayment, I cannot deal with that issue, and the tenants are at liberty to apply for a monetary order for the overpayment(s).

Since the tenants have been successful with the application before me, I find that the tenants are entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause issued to the tenants on December 31, 2010 and served on January 2, 2011 is hereby cancelled. I further order that the tenants be permitted to deduct \$50.00 from a future rent payment collected by 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: January 26, 2011.

Residential Tenancy Branch