



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated May 10, 2011 and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started in 2004. Rent is \$640.000 per month which includes utilities. The Landlord claimed that parking for one vehicle and one boat was also included in the rent. The Tenant claimed that the Landlord never told him he could only park one vehicle and one boat and noted that when he moved in he had two trucks and one boat.

The Landlord said the Tenant now has 3 trucks and 3 boats parked on the rental property which interferes with his and his spouse's use of the rental property. The Landlord and his spouse said they have asked the Tenant a number of times to move the extra vehicles and boats but he has not done so. The Landlord also said that the Tenant has a number of gas cans sitting around, one of which he claimed was full which they believe are dangerous. The Tenant said the Landlord has only asked him once to move a boat which he did. The Tenant admitted that there were gas cans on the rental property but claimed they were empty and therefore posed no danger.

The Landlord's spouse also claimed that she and the Landlord want to use the rental suite for their own purposes and in particular want to have a "summer kitchen." The Landlord's spouse also claimed that the Tenant's purchasing and fixing of many vehicles and boats on the rental property, failure to cut grass as he agreed to do and strong cooking smells is causing them much stress. Consequently, on March 10, 2011, the Landlord and his spouse gave the Tenant a letter which stated in part that "for family reasons" they wanted the Tenant to vacate by May 31, 2011. The Landlord's spouse said she discovered this was not a valid notice to end the tenancy so on May 10, 2011 she and the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated May 10, 2011. The ground checked off on the 2nd page of the Notice was that "the Tenant or a person permitted on the property by the Tenant has: put the

Landlord's property at significant risk." The Landlord then wrote on the Notice, "to[o] many vehicles 3 trucks + 3 boats." The Landlord also wrote at the top of the 2nd page, "we shall use the premises for our personal need."

The Tenant claimed the real reason the Landlords wanted to end the tenancy was because they wanted the rental property for their own use and therefore he argued that the Landlords should have served him with a 2 Month Notice to End Tenancy for Landlord's Use of Property.

Analysis

During the hearing, counsel for the Landlord repeatedly argued that the Landlord should be allowed to allege **any** of the other grounds set out under s. 47 of the Act although the corresponding boxes for those grounds set out on the One Month Notice had not been checked off by the Landlord. I find that there is no merit to this argument for the following reasons. The instructions on p. 2 of the One Month Notice clearly state, "Reasons for this 1 Month Notice to end the Tenancy (put an "x" in all the boxes that apply)." Consequently, I find that the Landlord was given reasonable notice or instruction that he had to check off as many boxes that applied to his circumstances. Furthermore, section 52(d) of the Act says that in order for a Notice to End Tenancy to be effective, it must state the grounds for ending the tenancy.

I also find that it would be contrary to the principles of natural justice to allow a Landlord to seek to end a tenancy by serving a Notice without stating the reasons for doing so and therefore depriving the Tenant of the right to respond to the allegations being made as the reason for ending the tenancy. Consequently, I find that the Landlord is only entitled to rely on the one ground of the Notice that he selected, ie. s. 47(d)(iii).

However, I find that there is insufficient evidence that the Tenant has put the Landlord's property at significant risk. The Landlord initially claimed that the Tenant's vehicles and boats were interfering with his use and enjoyment of the property. However, I find that there is no evidence that the Tenant's vehicles or boats pose a risk of damage to the Landlord's property. The Landlord then claimed that the Tenant left gas cans on the property that posed risk of damage to the rental property. The Tenant claimed that 3 of the 4 gas cans he left on the rental property were empty. The Landlord's counsel argued that fumes left in those 3 cans could pose a risk of damage however he offered no evidence in support of that assertion. In short, there is no evidence that any of the Tenant's conduct (described above) has put the Landlord's property at significant risk.

I have no doubt that the Tenant's many vehicles and boats, failure to cut the grass and other conduct is stressful to the Landlords and that they want to end this tenancy so that they don't have to deal with renters any longer. This was clear from the initial letter dated March 10, 2011 where the Landlord stated that they wanted to end the tenancy "for family reasons." This is also clear from the One Month Notice itself on which the

Landlord wrote, ““we shall use the premises for our personal need.” The Landlord’s spouse admitted that she wanted to use the suite for herself in the summer months because of health issues which make it difficult to deal with the heat.

Consequently, I find that there is insufficient evidence to support the ground set out on the One Month Notice to End Tenancy for Cause dated May 10, 2011 and it is cancelled. If the Landlords, in fact, wish to end the tenancy because they no longer want to rent it, then they may serve the Tenant with a 2 Month Notice to End Tenancy for Landlord’s Use of Property.

Conclusion

The Tenant’s application is granted. The One Month Notice to End Tenancy for Cause dated May 10, 2011 is cancelled and the tenancy will continue. As the Tenant has been successful on his application, I find pursuant to s. 72(1) of the Act that he is entitled to recover the \$50.00 filing fee he paid for this proceeding and I order pursuant to s. 72(2) of the Act that he may deduct that amount from his next rent payment when it is due and payable 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 08, 2011.

Residential Tenancy Branch