



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution, seeking to cancel a Notice to End Tenancy issued to them for alleged cause, for a monetary order for \$300.00 and to recover their filing fee.

All parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue #1:

The landlords filed an application for dispute resolution, but failed to pick up and serve the Notice of Hearing package to serve on the tenants. Therefore their application was cancelled by the Residential Tenancy Branch. The landlords attempted to argue about this matter and expressed their lack of comprehension why this would cause their application to be cancelled. The landlord stated she would be making a complaint.

The landlords were advised that, irrespective of their application being cancelled, they would proceed first in the hearing to explain or support their Notice to End the Tenancy.

Preliminary Issue #2:

The landlords served at least two packages of evidence to the Residential Tenancy Branch, but admitted not serving the evidence packages on the tenants.

Residential Tenancy Branch Rules of Procedure 4.1 states that the respondent, the landlords in this case, must serve their evidence on the applicant, the tenants in this case, at least five business days before the dispute resolution hearing. Rule 11.5 (b), states that a Dispute Resolution Officer may refuse to accept the evidence if the Dispute Resolution Officer determines that the acceptance of the evidence would prejudice the other party, or result in a breach of the principles of natural justice.

I have determined that the acceptance of the landlords' evidence would unduly prejudice the tenants, and I have refused to accept the landlords' evidence for consideration during this hearing or for making a Decision.

Thus the hearing proceeded on the landlords' testimony and the tenants' testimony and evidence.

Preliminary Issue #3:

The female landlord was quite argumentative throughout the hearing and repeatedly interrupted the hearing, questioning the validity of the dispute resolution process. The female landlord would not listen to instructions as to procedure or allow me to finish my sentences or questions without repeatedly interrupting and remained non-responsive to my questions throughout the hearing.

I cautioned the landlords, but the interruptions continued throughout the hearing, until the landlords were placed on mute, but allowed to listen, while the tenants were testifying, pursuant to Section 8.7 of the Rules of Procedure.

The male landlord did not testify, but he shouted in the background throughout the hearing, again despite cautioning.

Issue(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Are the tenants entitled to a monetary order and to recover the filing fee?

Background and Evidence

This one year, fixed term tenancy began on November 1, 2010, monthly rent is \$950.00 and the tenants paid a security deposit of \$475.00 on October 19, 2010. The tenancy agreement stated that the tenancy may continue on a month to month basis at the end of the fixed term.

Pursuant to the rules of procedure for the *Residential Tenancy Act* (the "*Act*"), the landlord proceeded first in the hearing and testified as to why the tenants had been served a 1 Month Notice to End Tenancy.

The landlords issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the tenants on July 31, 2011, with a stated effective vacancy date of August 31, 2011. The Notice was incorrectly dated August 1, 2011.

The landlord testified that the Notice was placed in the tenants' mail box and the tenants acknowledged receiving the Notice on August 2, 2011.

The causes as stated on the Notice alleged that the tenants made repeated late payments of rent and knowingly gave false information to a prospective tenant or purchaser of the rental unit.

The landlords also created an extra box on the Notice to End Tenancy and listed a cause not listed in the Act, that is, "tenants reported a leak incident last Nov. 2010 but refused to have the landlords see the unit."

The landlord submitted that the tenants made a late payment of rent in May and in July 2011. The tenants denied making the late payments, stating that the parties had a verbal agreement that the landlords would keep the security deposit to secure a half month's rent as the tenants were purchasing the rental unit. Additionally the tenant submitted that she informed the landlords that the July rent would be returned as NSF as the bank placed a hold on her deposit due to the long holiday weekend. The tenant stated she informed the landlords that she had a replacement cheque, which was picked up the next day.

As to the second cause listed, the landlord testified that the tenants, particularly the male tenant, made false statements to prospective purchasers of the rental unit, telling them they, the tenants, would not be moving from the rental unit until January 2012.

The landlord submitted that the fixed term ended on October 30, 2011, making these statements false.

Upon query, the landlord seemed unfamiliar with their tenancy agreement, and ways in which a tenancy may end under the Act.

The tenants responded that they did not make any false statements to purchasers, and that they intended to stay until the end of their fixed term. Further, the tenants submitted that they were constantly being interrupted by the landlords' realtor without proper written notice.

The Notice issued to the tenants on July 31, 2011, dated August 1, 2011, lists a reason which is not a permissible reason for ending a tenancy under the Act when the landlords created a separate box on the form.

The parties were informed that the Act requires a landlord to issue a Notice to End Tenancy that is in the approved form and reasons for ending the tenancy must be reasons permitted under the Act, although it is not clear that the landlords heard this during the hearing, due to their repeated interruptions and shouting in the background

As to the tenants' monetary claim of \$300.00, the tenant testified that due to the stress of receiving the Notice and in having to deal with the landlords, she had to take two days off work for stress leave.

Analysis

Based on the foregoing, the affirmed testimony and evidence, and on a balance of probabilities, I find that the Notice to End Tenancy should be cancelled.

I allow the tenants' Application for Dispute Resolution, and **I order that the Notice to End Tenancy issued July 31, 2011, dated August 1, 2011, is cancelled and is of no force or effect.**

Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The landlord alleged the tenants made two late payments, but submitted insufficient or no evidence to support this allegation. Further, even if true, the minimum number of late payments to support this cause is three late payments. I therefore find the landlords submitted insufficient evidence to establish that the tenants were repeatedly late in paying rent.

The landlords had insufficient evidence to show the tenant made false statements, that is, that the tenants planned on being in the rental unit until January 2012. The landlords were not present when the alleged false statements were made, and, in reviewing the tenancy agreement, the tenancy may very well extend into 2012 or beyond, due to the language providing for the possibility that the tenancy will convert to a month to month tenancy at the end of the fixed term. Thus, the statements were not patently false.

As to the last cause listed, the landlords are not able to create boxes on the Notice to End Tenancy document in order to end the tenancy.

Upon review of the 1 Month Notice to End Tenancy issued by the landlord July 31, 2011, dated August 1, 2011, I found the Notice to be invalid, unsupported and unenforceable as the causes listed are either not supported or proven and or provide a reason for ending the tenancy that is permissible under the Act. **As a result, the tenancy continues until such time it legally ends.**

As to the tenants' claim for a monetary order for \$300.00, when making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the tenants in this case, have the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the tenants submitted insufficient evidence that they suffered a loss of wages and I therefore **dismiss** their claim for a monetary order for \$300.00, without leave to reapply.

As the tenants were successful in their application seeking to cancel the Notice, I award them recovery of their filing fee of \$50.00. The tenants may deduct \$50.00 from a future month's rent payment in satisfaction of their monetary award.

Conclusion

The landlords' 1 Month Notice to end Tenancy for Cause issued July 31, 2011, dated August 1, 2011, is not valid and not supported by the evidence and the tenants are granted an order dismissing the Notice to End Tenancy.

The tenants' request for a monetary order is dismissed, without leave to reapply.

The tenants are granted recovery of their filing fee, which they may satisfy by withholding \$50.00 from their next or future month's rent payment.

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: August 31, 2011.

Residential Tenancy Branch