



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

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 (1 Month Notice) pursuant to section 47; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants/applicants did not attend this hearing, although I waited until 9:44 a.m. in order to enable them to connect with this hearing. The landlord/respondent and his wife attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord confirmed that he received the tenants' dispute resolution hearing package and notification of this hearing.

At this hearing, the landlord made an oral request for an Order of Possession if the tenants' application were dismissed.

Issues(s) to be Decided

Should the tenants' application to cancel the landlord's 1 Month Notice be allowed? If not, should the landlord's 1 Month Notice be allowed and should the landlord be issued an Order of Possession? Are the tenants entitled to recover their filing fee for their application?

Background and Evidence

The landlord testified that this tenancy commenced as a fixed term tenancy on June 16, 2009. The tenancy converted to a month-to-month tenancy after the initial term ended. Monthly rent is set at \$2,700.00 (plus utilities), payable in advance on the first of each month. The landlord continues to hold the tenants' \$1,350.00 security deposit paid when the tenants commenced their tenancy.

The landlord said that he issued the tenants a 1 Month Notice for causing extraordinary damage to the rental property. He entered written evidence and photographs of a cedar hedge that the tenants trimmed to enable them to widen the driveway for this rental unit

so that they could park two sets of vehicles on this driveway. The landlord said that the trimming was excessive and basically destroyed the cedar trees in question.

Analysis

The landlord did not provide written evidence of the 1 Month Notice and as such I have no document whereby I can assess the validity of their attempt to end this tenancy. In addition to this significant barrier to ending this tenancy and issuing them an Order of Possession, I find that the photographs they submitted and their written evidence do not entitle them to end this tenancy because they believe the tenants have trimmed too much of the cedar trees adjacent to the driveway of this rental home.

Although I dismiss the tenants' application without leave to reapply, I find that I have insufficient evidence before me to demonstrate that a valid 1 Month Notice was issued by the landlord to the tenant. I deny the landlord's oral request for an Order of Possession.

Conclusion

I dismiss the tenants' application without leave to reapply. I deny the landlord's oral request for an Order of Possession. This tenancy continues.

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: October 31, 2011

Residential Tenancy Branch