



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, 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 and to recover their filing fee.

The tenants and landlord appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

As a preliminary issue, the landlord argued that the tenants did not serve the Notice of Hearing and Application to the landlord to her address for service. However, the tenants served the documents to the address listed on the tenancy agreement for service and I accept that the landlord was properly served under the Residential Tenancy Act (the "Act") and tenancy agreement.

As a second preliminary issue, the landlord stated that she faxed her evidence package to the Residential Tenancy Branch on December 13, 2011; however as of the time of the hearing, the package was not in the file. I note that shortly after the hearing and prior to writing this Decision, the evidence package was delivered to me and I have considered the evidence prior to making this Decision. I further note that the only document delivered by the landlord that the tenants had not previously submitted into evidence was a letter containing the landlord's witnesses' names. The witnesses, however, did not attend the hearing.

Issue(s) to be Decided

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

Should the landlord be ordered to comply with the Act?

Background and Evidence

This one year, fixed term tenancy began on September 15, 2011, is set to end on September 14, 2012, monthly rent is \$1,500.00, plus utilities according to the tenants, and the tenants paid a security deposit of \$750.00 on September 14, 2011.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified as to why the tenants had been served a 1 Month Notice to End Tenancy for Cause and to support that Notice.

The landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the female tenant on November 29, 2011, via personal delivery, with a stated effective vacancy date of December 31, 2011. The causes as stated on the Notice alleged that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

The evidence submitted by both parties was a copy of the tenancy agreement, a letter from the landlord, dated on November 29, 2011, the Notice, and an addendum to the tenancy agreement.

The landlord stated that she used an "in-law" suite on the lower level as an office and that there was a common entry used by the rental unit and her office. Despite there being no provision in the written tenancy agreement prepared by the landlord, the landlord stated that she had a verbal contract with the tenants that she would be in the office, Monday to Friday, between 9:00 a.m.-2:00 p.m. The landlord stated that occasionally her brother would come by "her home;" however, the landlord immediately changed her testimony and said "her office," when referring to the "in-law suite." I note that the landlord also stated that she lived in the office, but later disputed she made this statement. I further note that the addendum to the tenancy agreement referred to the suite as an "office."

The tenants stated that the verbal agreement regarding the landlord's use of the office was that the landlord would use the office a couple of days a week, between the hours of 9:00 a.m. -2:00 p.m.

The landlord's testimony in support of the Notice:

On two different occasions, the male tenant entered the common entry and questioned or threatened her clients who were visiting her office. The landlord submitted that she was intimidated by the male tenant. I asked the landlord if she called out the police and she responded by saying no, but that she had consulted them.

The landlord's written evidence stated that the incident occurred just after 5:00 p.m.

On another occasion, the landlord stated that the male tenant accosted another visitor at around 7:00 a.m. Upon query, the landlord stated that she did not call out the police after this alleged incident.

The tenants' testimony in support of cancelling the Notice:

Upon viewing the property before deciding whether to rent, the landlord informed the tenants that she would use the office a couple of days a week between 9 a.m.- 2p.m. Despite this, the landlord is at the property frequently and at all hours, including late night, early mornings, and on weekends. In addition, the landlord's brother also worked out of the office and was frequently there at all hours.

The tenants were concerned that the office was being used or occupied at all hours, as the office was under the master bedroom and there was no insulation in the house.

The tenants agreed to pay all hydro bills, including for the office, as the landlord assured them she would only be using the office a few hours a week. However, despite the landlord's assurance, the office is being used by both the landlord and her brother at all hours, including having clients attend the premises.

As to the incident in question, the tenants have use and possession of the driveway as part of their tenancy agreement and were responsible for maintaining the same. The male tenant had made frequent trips on that day, taking debris and leaves from the premises to the landfill. However on the last trip of the day, the driveway was blocked by someone unknown to the tenants. The male tenant did question her as to who she was and why she was there, but that the visitor seemed unconcerned that she was blocking the tenants' driveway and refused to move.

The tenant denied being aggressive, but they were upset as more and more people were coming by the office, at all hours.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Once the tenants made an Application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed on the Notice.

In reaching this conclusion I find the landlord provided contradictory and confusing testimony and evidence, which caused me to doubt the credibility of the landlord. For instance the landlord stated that she informed the tenants that she would use the office between the hours 9 a.m.-2 p.m., Monday through Friday; however the landlord's own evidence and testimony shows that the visitors and any incidents occurred well outside those hours. In another instance the landlord stated that she lived in the office, then immediately retracted her statement and denied making it.

I find that rather than the landlord proving the causes listed on the Notice, I find, as I noted in the hearing, that the landlord's evidence and testimony supports that tenants have suffered a loss of their privacy and loss of use of their rental unit. I find that it also appears that the landlord believes that she is still able to use the rental unit and surrounding property in any manner she sees fit by coming and going at any hour and having her brother and clients drop by, despite having rented it to the tenants.

Due to the above, I therefore find that the landlord has submitted insufficient proof to establish the causes listed on the Notice.

As to the terms of the verbal agreement concerning the amount of time the landlord would spend using the office, in dealing with the agreed upon terms and services in a tenancy agreement, the onus is on the landlord to prove the terms and agreed upon at the commencement of the tenancy. The landlord did not prepare a written tenancy agreement which stated the amount of time she would be using the office in the rental unit for her own purposes. Without that proof and in light of the contradictions in testimony and evidence by the landlord, I accept the testimony of the tenants, who I found to be credible, and find that the landlord and the tenants agreed that the landlord would use the office only 2 days per week, strictly between the hours of 9:00 a.m. until 2:00 p.m. Additionally, this provision did not include having the landlord's brother or clients attend the rental unit.

I accept the testimony of the tenants that the landlord misled them into believing that the office would be used for 2 days a week, between 9 a.m. and 2 p.m. I found the tenants relied on this statement to their detriment, as I find that not only the landlord, but her brother and clients are using the office for countless hours during the week, in violation of their verbal agreement. I also note that the tenants relied upon this statement to induce them into agreeing to pay for the hydro for the entire home, including for the office.

Conclusion

I find the landlord's 1 Month Notice to End Tenancy for Cause dated November 29, 2011, is not valid and not supported by the evidence, and therefore has no force and effect. I **order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

I also grant the tenants' request for recovery of their filing fee, and they are hereby entitled and directed to satisfy their monetary claim of \$50.00 by deducting this amount from the next monthly rent payment. For clarification purposes, the tenants' next monthly rent payment will be \$1,450.00.

As I have accepted the tenants' version of the verbal contract between the parties regarding the use of the office by the landlord, pursuant to section 62 of the Act, I order that the landlord comply with those terms by using the office for no more than two (2) days a week, limited to the hours of between 9:00 a.m. to 2:00 p.m. I also order that the use of the office is limited to the landlord only, and not her brother or clients. In the event that the landlord fails to comply with these terms, the tenants are at liberty to make application for dispute resolution for monetary compensation.

As I have found that the landlord has deprived the tenants of their right to privacy and of the use of their rental unit, including the property and driveway, I also order that the landlord comply with the provisions of section 28 of the Act, concerning the tenants' right to quiet enjoyment.

I further find that the landlord seems unaware of her obligations as a landlord under the Residential Tenancy Act and as a result, I have included a copy of the guidebook to the Act for the landlord to use as a reference in future dealings with the tenants.

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: December 14, 2011.

Residential Tenancy Branch