



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, FF, O

For the landlord – OPC, MND, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to both the tenants and landlords application for Dispute Resolution. The tenants have applied to cancel the One Month Notice to End Tenancy for cause, other issues; and to recover the filing fee from the landlords for the cost of this application. The landlord has applied for an Order of Possession for cause; for a Monetary Order for damage to the unit, site or property; for a Monetary Order for Money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and the landlord's agents attended the conference call hearing. One of these agents left the hearing before it was concluded. Both parties gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord's agent and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession for cause?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on May 01, 2006. The tenants pay a monthly rent of \$825.00 which is due on the first day of each month in advance. This started as a fixed term tenancy which has reverted to a month to month tenancy after the end of the fixed term.

The landlord testifies that the tenant has caused damage to the landlord's property by removing plants, shrubs and fruit trees from the property. The landlord's agent testifies the tenant has also cleared plants from the empty lot at the back of the property. The landlord's agent has provided a letter from the second agent who has stated that he has noticed the yard has been cleared of shrubs and has a lot of vehicles parked on it. This agent left the conference call before he gave oral testimony concerning this matter.

The landlord's agent testifies the tenant as had numerous wrecked vehicles parked on the property including car parts. The landlord's agent has provided three letters from the city informing the landlord that the use of the lot for car repairs is in contravention of the City Bi-laws and informing the landlord that the cars must be removed. All three letters are dated February 23, 2011. The first letter also states that a follow up visit to the site would be conducted to determine compliance with the bi-laws. The second letter from the city informs the landlord that there appears to be scrapping, repairing and salvaging of vehicles on the property and the landlord has been informed this illegal use must stop by April 01, 2011. The third letter concerns the Property Maintenance and Unsightly Premises By-law and states an inspection of the property occurred where it was noted that there were multiple tires, engine parts, pieces of wood, garbage, refuse and other

debris on the property making it unsightly. The landlord was told to remedy this situation within 30 days or the City will enter the property and carry out the required work at the landlord's expense.

The landlord's agent testifies he wrote to the tenant (letter provided) concerning the letters from the City Inspector and informed the tenant to remove broken or scrap cars, not to repair cars and to dismantle the tent/pavilion. This letter was served upon the tenant on May 03, 2011. The landlord's agent, when questioned, testifies that the City carried out a follow up inspection of the property and he has heard no more from them.

The landlord's agent testifies the male tenant has also disturbed other neighbouring tenants. The landlord's agent testifies he has received written complaints from one neighbour complaining about the male tenant trespassing on their property and driving his SUV across the front lawn and back yard. Another neighbour has written to the landlord complaining that the male tenant has damaged his fence and the police have been informed. The landlord has provided copies of the complaint letters and the picture sent to him of the damaged fence.

The landlord testifies that he served the tenants with a One Month Notice to End Tenancy on October 20, 2011 in person. This Notice has an effective date of November 30, 2011 and gives the following reasons to end the tenancy:

- 1) The tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) Put the landlord's property at significant risk;
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has

- (i) Damage the landlords' property
- (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The landlord seeks an Order of Possession based on the reasons given in the Notice and seeks a Monetary Order for the damages to the property with regard to the replacement of the plants the landlord alleges the tenant has removed to the sum of \$500.00.

The landlord states the other part of his claim for compensation for damage or loss is also in connection with the plants and no further Monetary Order is sought.

The tenant disputes the landlords claims and testifies that the City sent these letters in the Spring of 2011 and since then he has cleared the yard as directed and the only vehicles remaining are his vehicles which are registered to the tenant and insured.

The tenant disputes that he has cleared scrubs and bushes from the yard or the empty lots at the back of the house. The tenant testifies he has only cleared a few berry bushes and the school at the back cleared the empty lots. The tenant testifies the rhododendron bushes the landlord has said he has removed are still in place in his yard.

The tenant disputes that he has disturbed neighboring tenants. He states the front lawn at the front of the neighbor's house is city property and access. The tenant states there has been conflict with this neighbor as the tenant has caught him on his property driving his cars and stealing gas from his vehicles. The tenant states he has now removed all his car keys and bought locking gas caps for his vehicles. The tenant testifies he has lived in the property since 2006 and never had any problems with the landlord or neighbors until now. The tenant testifies the fence in question does not even adjoin his property and testifies that he did not knock it down. The tenant also testifies that if this

neighbor with the damaged fence has reported it to the police the police have not contacted the tenants regarding this matter.

The tenants seek to have the Notice to End Tenancy set aside.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have taken into account each parties arguments and find the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy for cause based on the reasons given on the Notice. The landlord has provided letters from the City asking the landlord to comply with the Bi-laws and the landlord has provided a copy of a letter sent to the tenant asking him to ensure the Bi-laws are met by removing the offending articles from the property. The landlord also admits that since that time there has been no further letters from the City after a follow up visit was made by the City Inspector. The tenant has stated since that time the only vehicles now parked on the property are registered and insured to the tenant so he has complied with the City Bi-laws.

The landlord has provided witness statements from the tenants' neighbors but has failed to ask these witnesses to attend the hearing to corroborate their statements under oath and to submit to cross examination by the tenant; therefore very little weight can be placed on their statements when the tenant disputes them.

The landlord has provided insufficient evidence to support his claim that the tenants have removed plants, shrubs and fruit trees from the property as the other agent who was to testify to this fact had to leave the hearing before his testimony could be given.

Therefore, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

With regard to the landlord claim for \$500.00 to replace the shrubs, plants and fruit trees he alleges the tenant has removed from the property. As the landlords evidence has been deemed to be insufficient that the tenant has removed these plants from the property I find the landlord has not met the burden of proof in this matter.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The tenants' application is allowed. The one Month Notice to End Tenancy for Cause dated October 20, 2011 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover their **\$50.00** filing fee for this proceeding and may deduct that amount from their 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: November 17, 2011.

Residential Tenancy Branch