



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application to cancel a Notice to End Tenancy that was given for cause, and a request for recovery of the \$50.00 filing fee.

Background and Evidence

On August 31, 2012 the landlord personally served the tenant with a one month Notice to End Tenancy giving the following reasons:

- Tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - Seriously jeopardize the health or safety or lawful right of another occupant or the landlord.
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site.

The landlord's agent testified that:

- He gave the tenants the required 24 hour notice to enter the rental unit to show the unit to prospective purchasers.
- When he arrived to show the unit the tenants informed him in front of the other real estate agent and prospective purchasers that they only had five minutes in which to view the unit.
- One of the prospective purchasers was an elderly woman who could not move very quickly, and while they were still viewing the lower area the tenant pointed out on the clock that there was now only two minutes left in the viewing before they had to leave.

- As a result of this severe limitation the elderly woman was unable to properly view the property as she would not have been able to view the whole home in the remaining two minutes.
- They believe this was a severe restriction of the landlords right to show the rental unit to prospective purchasers, especially after having given the proper notice required under the Residential Tenancy Act.
- The tenants had no right to interfere with this viewing and in doing so made it extremely difficult for the landlord, the other real estate agent, and the prospective purchasers.
- The tenants have been very difficult and always refused to answer the door and as a result whenever they want to do a showing, they have to post the notice on the door and give an extra three days on top of the 24 hours required under the Act.
- The tenants even refused a viewing on July 4, 2012, even though they admitted they had received the notice on July 3, 2012, claiming that because it was not served to them personally the landlord still had to give them an extra three days.
- They are therefore requesting that this Notice to End Tenancy be upheld and that an order of possession be issued.

The tenant testified that:

- On August 27, 2012, the landlord's agent served them with the notice that he would be showing the rental unit on August 31 between 11:00-11:30A.M.
- On the day of the showing, the landlord's agent arrived with the prospective purchasers at 11:25 a.m., and therefore there was only 5 minutes left in the viewing time and they informed the landlord's agent of that fact.
- While the parties were viewing the unit they noticed at one point that, on the TV ,the time was 11:28 a.m. and therefore they did mention that there was only two minutes left in the viewing time.
- It was the landlord's agent that stated that the viewing would be between 11:00 a.m. and 11:30 a.m. and it was the agent that arrived late and restricted the viewing not them.
- As far as the July 3, 2012 notification of viewing is concerned, the landlords did not serve it to them personally and therefore the Residential Tenancy Branch informed them that they are allowed three more days.
- They are therefore requesting that this Notice to End Tenancy be canceled and the tenancy be allowed to continue.

Analysis

It is my finding that it was unreasonable for the tenants to limit the viewing of the property to 5 minutes.

The landlord's agent gave a proper 24 hour written notice to enter for showing the property, and arrived within the time frame stated on that notice, and therefore the landlord's agent had the right to do a proper showing of the rental property with the prospect purchasers.

I am sure the tenants knew full well that, by limiting the viewing to 5 minutes, it would be virtually impossible for the prospective purchasers to properly view the rental unit.

It is my finding that the tenant's actions seriously jeopardize the landlord's lawful right, and I will not set the Notice to End Tenancy aside.

Secondly I want to point out that the tenants did not have the right to deny the landlords viewing on July 4, 2012, because they admitted that they received the notice on July 3, 2012. The document would be considered to be served three days later when it's posted on the door or put in the mailbox, however if the party admits that they received it on a particular date then it's considered served on that date.

In this case, I believe it was just a misunderstanding on the part of the tenants, and therefore I would not have ended this tenancy based on this incident alone.

Conclusion

This application to cancel a Notice to End Tenancy is dismissed in full without leave to reapply and I order that the applicants bear the cost of the filing fee.

At the request of the landlords I have issued an Order of Possession to the landlords for 1 p.m. October 31, 2012.

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 05, 2012.

Residential Tenancy Branch