



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, RP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for cause; for an order that the landlord make emergency repairs for health or safety reasons; and for an order that the landlord make repairs to the unit, site or property.

The hearing did not conclude on the first day and was adjourned for a continuation of testimony. The landlord attended on the first day, gave affirmed testimony and called one witness. The tenants were represented by one of the named tenants who also gave affirmed testimony. However, on the second day of the hearing, the landlord was represented by the landlord's witness, and neither of the tenants attended. The line remained open while the phone system was monitored for 10 minutes and the only participant who joined the call was the landlord's witness who was appearing as agent for the landlord.

The parties were given the opportunity to cross examine each other and the witness on the testimony and evidence. The parties also both provided evidence that was not provided within the time required under the *Residential Tenancy Act*. The parties did not oppose inclusion of any of the evidence, and all evidence and testimony provided has been reviewed and is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Are the tenants entitled to an order cancelling a notice to end tenancy for cause?
- Are the tenants entitled to an order that the landlord make emergency repairs for health or safety reasons?
- Are the tenants entitled to an order that the landlord make repairs to the unit, site or property?

Background and Evidence

The parties agree that this month-to-month tenancy began on October 1, 2012 and the tenants still reside in the rental unit. The landlord was questioned about the amount of rent and its due date but was not able to provide the date rent is payable and testified that the monthly rent is \$425.00 and later testified that rent is \$450.00 per month. The landlord also testified that at the outset of the tenancy the landlord collected a security deposit in the amount of \$212.50, however that testimony was corrected by the landlord's witness and the tenant who both agree that the security deposit collected was in the amount of \$225.00.

During the landlord's testimony, the landlord spent a good deal of time yelling at the Arbitrator. The parties were placed in lecture mode on the conference call bridge during which time the parties were explained the process, which includes the requirement for an Arbitrator to take testimony and allow cross examination, and that if further disturbances were to take place the landlord would be removed from the call.

The landlord then continued the testimony and testified that the landlord's witness has been the property manager and as such has a better knowledge of the tenancy. The landlord testified that the tenants had resided in a different rental unit of the landlord prior to this tenancy.

The landlord's witness testified that during the evening of December 12, 2012 to the early morning on December 13, 2012 the tenants caused alot of disturbances to other tenants. On the morning of December 13, 2012 the witness received an array of calls and text messages from other tenants about noise and screaming coming from the rental unit. One of the tenants was fearful for their own safety and for the safety of personal property, and threatened to move out. The witness prepared a notice to end tenancy but withheld it from the tenants and issued a warning letter dated December 14, 2012.

The rental unit is a manufactured home on an 8 acre property which contains cabins and RV pads.

On December 27, 2012 another complaint was made to the witness from another tenant about loud music. The witness attended the acreage about 10:30 p.m. and one of the tenants in the rental unit started yelling at the witness immediately. The situation had quieted down, and the tenant was told that the witness was there about a noise complaint. The tenant replied by complaining about heat, and the witness had thought

the heat issue had been fixed. The witness went inside the rental unit and was astonished that the tenant had not reported a lack of heat again.

The next day, the witness gave the tenant a handwritten 24 hour notice to complete the repair, but the tenant rejected it because it wasn't on a Residential Tenancy Branch form. The landlord also served the notice to end tenancy dated December 13, 2012 that had previously been withheld. The witness went home and checked the internet for a form, and typed out another notice to complete the repair on December 31, 2012 and the tenants accepted it.

The witness also testified to being in the rental unit previously with an electrician, and the witness also fixed a water leak and moisture issues.

The witness spoke to the tenants and told them that the notice to end tenancy issued on December 13, 2012 is cancelled if there were no more complaints. The witness followed up with a letter, and provided a copy for this hearing. However, on January 20, 2013 another noise complaint was received by text message from another neighbour. On January 21, 2013 the tenant was served with another notice to end tenancy.

During the first day of testimony, the landlord left the conference call hearing prior to its conclusion.

The tenant testified that the tenant's disabled child had a fit that lasted for about 10 or 15 minutes on January 20, 2013. The tenant stated that there were no further incidents and the tenant should not be evicted for that disturbance.

The tenant indicated during testimony that the notice to end tenancy the tenant intended to dispute was the one issued in January, 2013.

The hearing was adjourned to February 8, 2013 at 9:30 a.m. The tenants did not attend, and no further testimony was taken. The landlord's witness and property manager attended as the landlord's agent and orally requested an Order of Possession.

Analysis

Firstly, the landlord's witness testified that the notice to end tenancy issued on December 13, 2012 is cancelled. Regardless of what conditions were attached to that, I find that the tenant received a message from the landlord or the landlord's agent to the effect that the notice was cancelled by the landlord. Therefore, I find that the notice is

cancelled and the application is amended to show that the tenants disputed the notice to end tenancy issued by the landlord in January, 2013.

The *Residential Tenancy Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's agent orally requested an Order of Possession. I have reviewed the notice to end tenancy issued on January 21, 2013, and I find that it is in the approved form and is dated and signed by the landlord. The notice contains an effective date of vacancy of February 21, 2013 which I find is contrary to the *Act*. The *Act* requires a notice to be effective the day before the day rent is payable and must be served upon the tenant the day before rent is payable under the tenancy agreement. In this case, the parties testified that rent is payable on the 1st day of each month, and therefore the effective date of vacancy must be no earlier than February 28, 2013. I find that the tenant's application to cancel a notice to end tenancy must be dismissed for the tenant's failure to remain in attendance and failure to establish that the notice to end tenancy should be cancelled. I further find that the effective date is automatically changed, pursuant to Section 53 of the *Act*, to February 28, 2013. I find that the landlord is entitled to an Order of Possession effective February 28, 2013 at 1:00 p.m.

With respect to the tenants' applications for an order that the landlord make emergency repairs for health or safety reasons, and for an order that the landlord make repairs to the unit, site or property, I find that the tenants did not provide testimony of what repairs are required. The tenants did not remain in attendance for the hearing, and the applications therefore must be dismissed.

Conclusion

For the reasons set out above, the tenants' application for an order that the landlord make emergency repairs for health or safety reasons is hereby dismissed.

The tenants' application for an order that the landlord make repairs to the unit, site or property is hereby dismissed.

The tenants' application for an order cancelling a notice to end tenancy for cause is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective February 28, 2013 at 1:00 p.m.

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: February 14, 2013

Residential Tenancy Branch

