



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Swan Lake Nature Sanctuary
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause, as well as for an order that the landlord comply with the Act. Both tenants, an agent for the landlord and counsel for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. The landlord stated that they received the tenants' last package of evidence late; I confirmed that the landlord had reviewed and was prepared to respond to the tenants' late evidence, and I admitted that evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issues

The tenants and the landlord are involved in another dispute resolution hearing, pursuant to another application by the tenants. One of the orders that the tenants seek in their other application is an order that the landlord comply with the Act. I informed the parties that as that remedy was already being sought in the tenants' other application, I would not address it in this application.

The tenants requested an adjournment because they did not receive the interim decision from their other proceeding until late. I denied the request, as the tenants were aware that their application to cancel the notice to end tenancy for cause would be proceeding as scheduled, and I had already determined that I would admit the tenants' late evidence.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began in 2000. The landlord is a non-profit society that manages the rental house and property as well as a large parcel of nature sanctuary land adjacent to the rental property. The society is governed by a board of directors.

On April 25, 2013, the landlord served the tenants with a notice to end tenancy for cause. The notice indicated that the reason for ending the tenancy was that the tenants had significantly interfered with or unreasonably disturbed another occupant or the landlord.

Landlord's Evidence

The landlord stated that the relationship between the landlord and the tenants has become untenable, as the tenants continually trespass on the sanctuary's properties and significantly interfere with and unreasonably disturb the daily activities of the staff, volunteers and members of the society. The landlord also alleged that the tenants have vandalized some items on the sanctuary property. The landlord sent two letters to the tenants, in November 2012 and again on January 31, 2013, warning the tenants to desist in this behaviour.

The landlord submitted written statements from board members and staff of the society. The statements describe several instances where the tenants behaved aggressively toward staff and volunteers who were engaged in work on the sanctuary property or carrying out other tasks for the society. Most of these instances did not involve staff members who acted in the role of landlord and were carrying out tasks related to management of the rental property. The statements of two staff members, JW and BR, provided evidence of direct interactions they had with the tenants engaging in aggressive or threatening behaviour toward them. These incidents took place in June, August and September 2012. A maintenance employee, CB, indicated that he had been on the receiving end of verbal abuse by the male tenant in November 2012 and January 2013; however, these incidents occurred while CB was carrying out work for the society on sanctuary property, and there was no clear evidence that CB ever acted in a capacity as agent of the landlord for the residential property.

In the hearing, the landlord stated that the tenants' negative behaviour has subsided significantly since the beginning of April 2013.

Tenants' Response

The tenants denied shouting, yelling or engaging in any threatening behaviour with the landlord, particularly in the incidents described above. The tenants stated that they have tried to get along with the new executive director, and they have tried to resolve the situation directly with him. The male tenant stated that he did shout at CB because CB is not an electrician but he was engaging in electrical work in the shed beside the rental property, and the tenant did not want CB blowing up the house.

Analysis

Upon consideration of the evidence, I find that the notice to end tenancy is not valid. The landlord did not provide sufficient evidence to establish that the tenants significantly interfered with or unreasonably disturbed another residential occupant or the landlord. The instances where the tenants may have engaged in inappropriate behaviour with an employee of the society who also acted as agent of the landlord occurred in June, August and September 2012. I do not find those incidents to be sufficiently recent; further, the authors of those statements did not give testimony in the hearing and were not available for cross-examination, and the tenants disputed that evidence. The landlord stated that the tenants' behaviour has improved significantly since the beginning of April 2013; yet the landlord issued the notice to end tenancy near the end of that month.

It appears from the landlord's evidence that the tenants may have been engaging in inappropriate behaviour toward members of the society and conducting questionable behaviour on sanctuary land; however, these purported activities do not fall under the jurisdiction of the *Residential Tenancy Act*.

As the tenants' application was successful, they are entitled to recovery of the filing fee for the cost of their application.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

The tenants are entitled to recovery of their filing fee, and they may withhold \$50 from their next month's rent in satisfaction of this amount.

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: May 27, 2013

Residential Tenancy Branch