



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlords' 1 Month Notice to End Tenancy for Cause (the "Notice"), for a monetary order for money owed or compensation for damage or loss, an order requiring the landlords to make emergency repairs to the rental unit, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties, including the landlords' witness, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the landlords confirmed that they had received the tenants' evidence; the landlords supplied no documentary evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

As a preliminary issue, I have determined that the portion of the tenants' application dealing with a request for monetary compensation is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dismissed that portion of the tenant's request for monetary compensation, **with leave to reapply**.

Additionally, at the conclusion of the hearing, the tenant confirmed that her request for an order requiring the landlords to make emergency repairs had been pre-emptive when

she filed her application in case those repairs turned out to be necessary. The tenant stated that emergency repairs were not required.

The hearing proceeded only upon the tenants' application to cancel a Notice to End Tenancy for Cause.

Issue(s) to be Decided

Have the tenants established an entitlement to have the Notice to End Tenancy for Cause cancelled and are they entitled to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on August 15, 2013, that monthly rent is \$600, and that the tenants paid a security deposit of \$300.

The tenants' rental unit is in the lower level of a home, and the landlords rent the upper level and a portion of the separate lower level of the home to other tenants.

Pursuant to the Rules, the landlords proceeded first in the hearing and testified in support of issuing the tenants a 1 Month Notice to End Tenancy for Cause. The landlord testified that they issued the tenants the Notice on September 4, 2013, by attaching it to the tenants' door, listing an effective end of tenancy on October 4, 2013.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to October 31, 2013.

The causes listed on the Notice alleged that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant.

In support of their Notice, the landlord testified there was an incident between the tenants and the other upper tenants' dog and son. In further explanation the landlords submitted that tenant LM had a confrontation with the son of the other tenants and had threatened to kill the other tenants' dog, in front of the son.

In response to my question, the male tenant said that this incident occurred on August 29, 2013, and that he attempted to resolve this issue with both sets of tenants, without success. Some of the attempts made were to telephone the tenants, but that he was met with abusive language and hanging up of the telephone.

I then asked the landlord if he attended the rental unit to attempt to resolve the conflict between the two sets of tenants, and he said that he did, on September 4, 2013. When he determined that there was no solution regarding the conflict between the upper tenants, who the landlord called his "main" tenants and these tenants, he issued a notice to end the tenancy to these tenants.

I note that the landlord provided no clear explanation as to why he called the other tenants their "main" tenants, other than perhaps they have lived at the residential property longer and rented out the main level.

When questioned further, the landlord confirmed that he had not witnessed any incident between any of the tenants, but that he believed the upper tenants' version of events as he himself experienced the aggressive nature of tenant LM, as she had been aggressive towards him on the telephone and had treated him in an inhuman manner.

The landlord also went on to say that he did not believe the upper tenants' dog had been at fault in the incident with the tenants, as the dog, who had been collected by the bylaw officer, had been released back to them, with no report being issues.

In response to my question, the landlord confirmed that there had been no written warnings to the tenants regarding any alleged behaviour.

In response, the tenants denied using vulgar or threatening language to the landlords or the upper tenants. The tenant also denied threatening to kill the upper tenants' dog

In describing the incident of August 29, the tenant submitted that she was entering her rental unit from the shared backyard when the upper tenants' dog charged over to her, attacking and biting her, intent on killing her cat. The tenant submitted that the upper tenants' son, who was playing on the trampoline in the back yard, did nothing to stop the dog from attacking her cat, who by this time had escaped.

The tenant submitted that she emailed the female landlord to let her know that she had been attacked, as well as a service technician, earlier in the day.

The tenant submitted that she was required to have a tetanus shot and antibiotics as a result of the dog bite.

The tenant said that after the dog was removed by a bylaw officer afterwards, the female landlord reminded her that the upper tenants were the primary tenants.

The tenant submitted that the dog was returned to the upper tenants, with the understanding that a fence would be erected between the two entrances.

The tenant's relevant documentary evidence included the tenancy agreement, photos of the dog and alleged injuries, the Notice, an animal control report, and written communication with the landlords.

The landlords' witness, one of the upper tenants, denied the injuries or that his dog was aggressive. The witness also submitted that he had warned the other tenants that his dog did not like cats.

The witness said that the tenant "pretty much slammed the door in his face."

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The landlords have the burden of proving on the balance of probabilities that there were sufficient grounds to end this tenancy for the stated causes.

In the case before me, I find the landlords submitted insufficient evidence to demonstrate that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety or lawful right of another occupant.

In reaching this conclusion, the landlords testified, giving a version of events, and the tenants testified, giving a differing, equally probable version of events.

The landlords were not witness to any of the alleged incidents taking place at the residential property and instead relied on the statements from the upper tenants, who were described by the landlords themselves as the main tenants.

In listening to the landlords, I was persuaded that they accepted the upper tenants' version of events over these tenants' version of events, because they considered the upper tenants their main tenants.

The Act deems that all tenants have the same rights as any other tenants, regardless of whether they may pay more or have lived at a residence longer and no tenant has priority over any other tenant of a residential property regardless of the rent paid or the longevity of the tenancy.

I further was unconvinced by the male landlord's testimony that he attended the residential property to attempt to resolve the conflict between the two sets of tenants, as this was the day he served the Notice upon the tenants. He did not deny going over to the residential property with the Notice.

Rather than the tenants giving any cause to end the tenancy, I find the landlords failed to address the issues between the two sets of tenants, for which the Act does not place priority of one tenant over any other tenant, as apparently the landlords do.

I was further persuaded by the lack of any documentary evidence from the landlords, who instead relied on the testimony of the upper tenant, who had the issue with the tenants.

In any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of other independent documentary evidence, I find the party who bears the burden of proof will not likely prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

Due to the above, I therefore find that the landlords have submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlords' 1 Month Notice to End Tenancy for Cause, dated and issue September 4, 2013, listing an effective move out date of October 4, 2013, 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 grant the tenants recovery of their filing fee of \$50, due to their successful application, and authorize them to redeem this amount by deducting \$50 from their next or a future month's rent payment.

Conclusion

The tenants' application has been granted and I have cancelled the landlords' 1 Month Notice to End Tenancy for Cause.

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* and is being mailed to both the applicants and the respondents.

Dated: October 24, 2013

Residential Tenancy Branch

