



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC; LAT; MNDC; FF

Introduction

This Hearing dealt with the Tenants' application filed October 29, 2013, to cancel a *One Month Notice to End Tenancy for Cause* issued October 28, 2013 (the "Notice") for an Order allowing the Tenants to change the locks to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that Tenants served the Landlord with the Notice of Hearing documents and copies of their documentary evidence by hand delivering the documents to the Landlord. The Landlord acknowledged receiving the documents on November 1, 2013.

The Landlord testified that he served the Tenants with copies of his documentary evidence, but he could not remember on what day service took place. The Tenants stated that they did not receive any documentary evidence from the Landlord. I find that the Landlord did not provide sufficient proof of service of his documentary evidence and therefore it was not considered.

Preliminary Matter

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that Tenants' claim for compensation and their request for the Order are not sufficiently related to the Tenants'

request to cancel the Notice. The Tenants confirmed that they wished to proceed with their application to cancel the Notice and therefore, I dismiss the Tenants' application for a Monetary Order and other Orders **with leave to reapply**.

Issue to be Decided

- Should the Notice be cancelled?

Background and Evidence

The rental property is a house containing two separate suites. The Tenants rent the whole house from the Landlord. The Tenants house is approximately 4,000 square feet with 4 bedrooms and 2 full bathrooms upstairs and one bedroom and a bathroom downstairs. The downstairs also contains a separate suite with 1 bedroom and 1 full bathroom.

A copy of the tenancy agreement was provided in evidence. The agreement is between the Tenants and the Landlord's agent, who is no longer working for the Landlord. I accept the parties' testimony that the Landlord is the owner and the Landlord of the rental property.

This tenancy began on March 1, 2013. Monthly rent is \$2,775.00, due on the first day of each month. On February 13, 2013, the Tenants paid a security deposit in the amount of \$1,390.00 to the landlord.

On October 28, 2013, the Landlord served the Tenants with the Notice, which alleges that the Tenants have allowed an unreasonable number of occupants in the rental unit and that the Tenants have assigned or sublet the rental unit without the Landlord's written consent.

The Landlord testified that the Tenants allowed an unauthorized occupant to move into the lower suite in October, 2013.

The Tenants stated that they have four children and that the house is big enough for two adults and four children. The Tenants denied that they have rented the suite to another occupant. They stated that upon receiving the Notice, they immediately went to the store and bought a newspaper. They took photographs of the empty suite with the male Tenant holding the paper, indicating the date. The Tenants provided those photographs in evidence.

The Landlord stated that one of the Tenants' neighbours is a police man and that he noticed that someone had moved into the downstairs suite. The Landlord did not provide a written statement from the neighbour, nor did the neighbour give verbal testimony at the Hearing.

The Tenants stated that they don't have keys to the lower suite, even though the Landlord was ordered to provide them keys at a former dispute resolution hearing. The Tenants gave the file number for the former hearing.

The parties gave additional testimony with respect to orders that were made at the former hearing; however, that testimony was not relevant to the Tenant's application to cancel the Notice and therefore I have not recorded it in this Decision.

The Tenants agreed to allow the Landlords to inspect the rental unit, including the lower suite at 7:30 p.m. on December 11, 2013, so they could satisfy themselves that no additional occupant was living there. The Landlord agreed to do the inspection at that time.

The Landlord asked how a landlord could get rid of a tenant that he didn't want living in his property. I advised the parties that I would provide information in my Decision with respect to how tenancies end in British Columbia.

Analysis

When a landlord seeks to end a tenancy, the onus is on the landlord to prove on the balance of probabilities that the tenancy should end for the reasons indicated on the notice to end tenancy. In this case, I find that the Landlord has not provided sufficient evidence to support either of the reasons.

The Tenants rent the whole house from the Landlord. I find that 2 adults and 4 children are not an unreasonable number of occupants for a 6 bedroom, 4 bathroom house. I find that the Landlord has not provided sufficient evidence that the Tenants have sublet or assigned the tenancy agreement. The Tenants remain living in the rental unit and there is insufficient evidence that there is any other occupant living in the suite.

For the reasons set out above, I find that the Notice is not a valid notice to end the tenancy and it is canceled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

The Tenants have been successful in canceling the Notice and I find that they are entitled to recover the cost of the \$50.00 filing fee from the Landlord. Further to the provisions of Section 72 of the Act, the Tenants may deduct **\$50.00** from future rent due to the Landlord.

Sections 44, 45, 46, 47, 48, 49 and 50 of the Act contain information on how a tenancy ends.

An information sheet accompanies this Decision and includes a link to the Residential Tenancy Branch's website, where the parties can find the Residential Tenancy Act and Regulation as well as other guidelines and policies. I encourage the parties to acquaint themselves with the provisions of the legislation so that they are aware of their rights and responsibilities under the Act.

Conclusion

The Notice to End Tenancy issued October 28, 2013, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants may deduct \$50.00 from future rent due to the Landlord.

The Tenants' applications for an Order allowing the Tenants to change the locks to the rental unit; and for compensation for damage or loss under the Act, regulation or tenancy agreement are **dismissed with leave to reapply**.

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: December 16, 2013

Residential Tenancy Branch

