



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF
 MT, CNC, CNL, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for more time than permitted under the *Residential Tenancy Act* to dispute a notice to end tenancy; for an order cancelling a notice to end tenancy for cause; for an order cancelling a notice to end tenancy for landlord's use of property; and to recover the filing fee from the landlords for the cost of the application.

Both landlords and the tenant attended the hearing and gave affirmed testimony. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other prior to the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing, the parties were questioned about the *Act* upon which this application is brought. Both Applications for Dispute Resolution show that they are brought under the *Manufactured Home Park Tenancy Act*. The parties agreed that the Applications should both be amended to show that they are brought under the *Residential Tenancy Act*. The amendment was allowed, and this Decision is based on the *Residential Tenancy Act*.

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

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for cause?
- Should the tenant be permitted more time than permitted under the *Act* to dispute a notice to end tenancy?

- Should the notice to end tenancy for cause be cancelled?
- Should the notice to end tenancy for landlord's use of property be cancelled?

Background and Evidence

The parties agree that this month-to-month tenancy began on January 1, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$500.00 per month is payable on the 1st day of each month, and the rent for the month of March, 2014 has not yet been paid. There are no other rental arrears, and there is no written tenancy agreement. The landlords collected a security deposit from the tenant in the amount of \$125.00 sometime around April, 2013 which is still held in trust by the landlords, and no pet damage deposit has been collected. The rental unit is a manufactured home.

The first landlord testified that the tenant was personally served with a 1 Month Notice to End Tenancy for Cause on February 15, 2014, a copy of which has been provided. The form is not dated but is signed by the landlord and contains an expected date of vacancy of March 15, 2014. The reasons for ending the tenancy are stated on the reverse of the form: "Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;" and, "Tenant has assigned or sublet the rental unit/site without landlord's written consent." The landlord testified that the tenant has put the property at significant risk by smoking in the rental unit, which is a breach of the verbal agreement, and the landlords found a cigarette butt on the floor on January 31, 2014 which had burned the linoleum. Also, there are cigarette burns around the top of the washing machine. Photographs have been provided, which show the burn marks. A lot of renovations were done to the rental unit before the tenant moved in.

The landlord further testified that the tenant has allowed his brother to move in. The landlord also asked the tenant to not allow his brother to store stuff on the property, but the photographs show the brother's belongings in the yard. The other landlord, the tenant and the tenant's "guest" are also brothers.

The landlord also issued a 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 1, 2014 but does not know when it was served, but it was served personally by the other landlord. A copy of the notice has been provided and it is dated February 1, 2014 and contains an expected date of vacancy of April 1, 2014. The reason for issuing the notice states: "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant." The landlord testified that the landlords require the rental unit to be vacant because they intend to renovate again so they can sell it, but no permits have yet been obtained.

The landlord agreed that the Tenant's Application for Dispute Resolution was personally to each of the landlords on February 25, 2014, and the tenant filed it on February 24, 2014. The 1 Month Notice to End Tenancy was served on February 15, 2014 and therefore, the tenant has made the application within the time required under the *Act*, and the landlord agrees that the tenant need not seek more time to make the application.

The landlord further testified that the tenant tried to pay half the rent on March 10, 2014 but the landlord told him that it didn't have to be accepted because it wasn't a full rent payment.

Also provided as evidence is a letter dated March 9, 2014 from the landlords setting out the issues. It states that there was to be no smoking and the yard was to be maintained by the tenant. Attending the unit, the landlord found multiple burn marks, ashtrays, as well as damage to the kitchen counter, window sill, tile and floor. Also a lot of junk in the yard, most of which belongs to the tenant's brother, some to their father, and the word "hate" is spray painted on the shed wall. Also included is a letter from a neighbour asking that the eyesore be cleaned up. The landlords' letter also states that the tenant..."didn't pay rent Feb 1st so he was given a ten day notice and now we are in March and he has failed again to pay rent so he was given a ten day notice on the 3rd and it is now the 9th and no rent has been paid."

The tenant testified that his brother only stayed at the rental unit for about 7 days on 2 occasions, and also stayed at the landlord's place.

The tenant further testified that the landlord took the photographs after the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued.

The tenant has also provided copies of rude text messages exchanged between the parties, and a letter stating that the 2 Month Notice to End Tenancy for Landlord's Use of Property was served about 2 hours after that altercation.

The tenant also testified that the rental vacancy rate in the jurisdiction is low, and the tenant believes the landlords want to evict him for more rent for a friend. The tenant stated that he finds it interesting that the notice to end tenancy was given and 2 weeks later the tenant was served with a 1 Month Notice to End Tenancy for Cause.

Analysis

Firstly, with respect to the 2 Month Notice to End Tenancy for Landlord's Use of Property, the *Act* requires a landlord to have all permits and approvals required by law to renovate before issuing the notice. The parties agree that no approvals or permits have yet been obtained, and therefore, I cancel that notice to end tenancy.

With respect to the tenant's application for more time to dispute a notice to end tenancy than permitted under the *Act*, the parties agree, and I find that the tenant has filed the dispute on time and that no further time is required. Therefore, I dismiss that portion of the tenant's application.

The issue that remains is whether the 1 Month Notice to End Tenancy for Cause should be cancelled or if it should be upheld and the landlords provided with an Order of Possession.

Both parties have provided me with a copy of the notice and I find that it is in the approved form. The form is not dated but is signed by both landlords and contains an expected date of vacancy of March 15, 2014. The parties agree that rent is payable on the 1st day of the month, and the *Act* states that it must be served before the day in the month that rent is payable and must contain an effective date that is not less than one month after it is served. Also, in order to be effective, it must be signed and dated by the landlord. The landlord testified that it was personally served on February 15, 2014 but that is not corroborated by the tenant, who testified that it was served 2 weeks after he got the 2 Month Notice to End Tenancy for Landlord's Use of Property.

I find that the 1 Month Notice to End Tenancy for Cause is not effective under the *Act*, and therefore the landlords' application for an Order of Possession is dismissed, the notice to end tenancy is cancelled, and the tenancy continues. I am not clear with respect to rental arrears, but the landlords are at liberty to issue a notice to end tenancy for any reason set out in the *Residential Tenancy Act*, or the parties can mutually agree in writing to end the tenancy.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of filing. I hereby order the tenant to reduce rent by that amount for a future month, or that it be applied to any rental arrears, at the landlords' discretion..

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed.

The 2 Month Notice to End Tenancy for Landlord's Use of Property is hereby cancelled.

The 1 Month Notice to End Tenancy for Cause is hereby cancelled.

The tenant's application for more time to dispute a notice to end tenancy than permitted by the *Act* is hereby dismissed.

I order that the tenant be permitted to reduce rent by \$50.00 for a future month's rent payable under the tenancy agreement, or may be applied to rental arrears, at the landlords' discretion.

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: March 25, 2014

Residential Tenancy Branch

