



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MT, CNC, FF

Introduction

This hearing dealt with applications by both the landlord and one of the tenants. The landlord applied for an order of possession, and the tenant applied to cancel a notice to end tenancy; to extend the time to apply to cancel that notice, and to recover his RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the tenant be granted an extension of time to apply to dispute the notice to end tenancy?

If so, should the notice to end tenancy be cancelled?

Is the landlord entitled to an order of possession?

Background and Evidence

The parties agree the tenancy started August 1, 2012 and was initially for a fixed term ending July 31, 2013. The tenants are obligated to pay \$1,850.00 rent monthly in advance on the first day of the month.

The written tenancy agreement, signed by the parties on July 17, 2012 indicates there are two tenants. The parties agree the tenants are the female tenant and a corporation owned by the male tenant. The male and female tenants are spouses. The male tenant gave evidence that the tenants agreed to separate in February 2014 and, as a result, he has since occupied the lower level of the house while the female tenant occupies the upper level.

The landlord gave evidence that she served the male tenant with a notice to end tenancy for cause (the "Notice") by giving the Notice to the female tenant on April 26, 2014. The Notice specifies an effective date, or move-out date, of May 31, 2014. The Notice names only the male tenant, and provides the following reason for the Notice:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

The female tenant gave evidence that she placed the Notice on the male tenant's bed in the lower part of the house that same day (April 26, 2014). The female tenant gave evidence that she did not see the male tenant or hear him in the house again before she herself left town on May 7, 2014 for an overseas trip.

The male tenant gave evidence that he left the rental unit on April 25, 2014 and did not return until May 11, 2014. On April 27, 2014, he emailed the female tenant to let her know that he was "taking a week off".

The landlord gave evidence that the tenants are her parents. Her evidence is that her main concern is her mother. The landlord's evidence is that she does not feel it is healthy for her parents to continue cohabiting during their separation. Her mother (the female tenant) normally looks after the landlord's children but the landlord has not brought her children over since her parents decided to separate. The landlord's view is that things are difficult enough with a pending divorce.

The male tenant's evidence is that the tenants' separation is proceeding amicably, and he is not aware of who he may have disturbed. His evidence is that he believes his daughter and son-in-law (the landlords) are upset that the tenants are divorcing.

Analysis

Where a landlord seeks to end a joint tenancy, this will apply to all the tenants jointly. The landlord and the female tenant may have been under the mistaken impression that the Notice only applied to the male tenant (since only he was named on the Notice), and not to both tenants. It was the landlord's intention to evict only the male tenant and not the female tenant.

Ordinarily, it would be effective service to personally serve a notice to end tenancy on one of two joint tenants. However, in this case the Notice named only the male tenant and was only intended for him. Also, the joint tenants are separating spouses who are living in separate areas of the house. Due to their recent separation, they were not in

regular day-to-day communication about each other's whereabouts. The female tenant did not know the male tenant was away at the time she placed the Notice in his area of the house.

I accept the evidence of the male tenant that he was not at the rental property on April 26, 2014 and did not return to the rental property until May 11, 2014. He therefore received the Notice on that date. He then filed his Application for Dispute Resolution within 10 days of receipt, on May 20, 2014. I find that these were exceptional circumstances that warrant an extension of the time limit for apply to dispute the Notice and I grant an extension.

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified reasons on a balance of probabilities. Here, the landlord has specified one reason for ending the tenancy. If the landlord proves this reason, the Notice will not be canceled. However, if the landlord does not prove the specified reason, then I must cancel the Notice.

In this case, the landlord did not provide any evidence that suggests the male tenant caused significant interference or unreasonable disturbance to another occupant or the landlord. The landlord simply thought that evicting the male tenant would be in the best interests of her parents. That is not a valid reason under the Act for ending a tenancy. For that reason, I cancel the Notice. Since the tenancy will continue, the landlord is not entitled to an order of possession and I dismiss her application.

Since the tenant has been successful in his application, he is entitled to recover his RTB filing fee of \$50.00 from the landlord. I authorize the tenant to deduct \$50.00 on a one-time basis from the rent.

Conclusion

I grant the tenant an extension of time to apply to dispute the Notice. The Notice is cancelled. The tenant may deduct \$50.00 from the rent to recover his RTB filing fee. The landlord's application is dismissed.

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: July 08, 2014

Residential Tenancy Branch

