



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants applied to cancel a 1 month Notice to End Tenancy for Cause (the "1 Month Notice").

The male tenant, the landlord, the spouse of the landlord and legal counsel for the landlord ("counsel") attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant confirmed that the tenants received the documentary evidence from the landlord prior to the hearing and had the opportunity to review that evidence prior to the hearing. Counsel for the landlord took the position that the tenants failed to serve their evidence in accordance with the Rules of Procedure and that the evidence should not be admissible. As the tenants documentary evidence was filed late and not in accordance with the Rules of Procedure, the tenants' documentary evidence was excluded from the hearing. The tenant was advised that he could speak to his documentary evidence by way of his oral testimony during the hearing. I find the tenants were served with the landlord's documentary evidence in accordance with the *Act*. Only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on June 15, 2013 and is scheduled to revert to a periodic, month to month tenancy after June 15, 2014.

Monthly rent is \$1,700.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$850.00 and a pet damage deposit of \$850.00 at the start of the tenancy.

The tenant confirmed that his wife, S.C. received the 1 Month Notice dated June 25, 2014 on June 27, 2014, with an effective vacancy date of August 31, 2014. The tenants disputed the 1 Month Notice on July 4, 2014, which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed the following one cause on the 1 Month Notice:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Regarding the cause listed above, the landlord and counsel stated that the material term related to the tenant operating a business out of the rental unit. Counsel referred to section 14 of the tenancy agreement which reads in part:

“USE OF RENTAL UNIT. The tenant and his guests must use the rental unit for private residential purposes only and not for any illegal, unlawful, commercial, political, or business purposes. No public meeting or assemblies may be held in the rental unit. No business or commercial advertising may be placed on or at the rental unit or residential property...”

[reproduced as written]

The tenant states that he made the landlords aware before entering into the tenancy agreement, that he was self employed and would have a home office in the rental unit. The landlord testified that while he was aware that the male tenant had a business, he was not made aware that the male tenant would work from the rental unit and that he assumed he had a place of business near the rental unit.

The landlord and tenant referred to a December 19, 2013 email from the landlord to the tenants which reads in part:

“...Hi...

Due to increase cost of electricity I am going to have to charge more rent. I will be increasing the rent to \$2,000.00 per month. When looking at the electricity cost I am paying compared to other houses in the area I am paying twice the amount. (the average house in the area uses 50 to 72 KWh and You are using 100 to 163 KWh). I don't know if it is due to [male tenant's] business?..."

[reproduced as written]

The landlord referred to a May 15, 2014 email from the landlord to the tenants which reads in part:

"...This is an Eviction Notice because you are running a business out of the rental unit, which is not allowed according to the contract you signed. (ROMS BC Residential Tenancy Agreement) Section 14. Use of the Rental Unit, states, "The tenant must use the rental unit for private residential purposes only and not for commercial or business purposes."

Also [municipality] By Law states, "a tenant must get written permission from the land owner to run a business in the rental unit"

I expect you both to move out by June 15, 2014..."

[reproduced as written]

The landlord presented a document printed from a website that indicates that the tenant has listed his home address as his business address. The tenant confirmed that the listed business name is the name of his business, but that he has not received money for his business since December of 2013, and that he does his work via computer and telephone and does not have business contacts attend at the rental unit. The tenant stated that he only contacts business contacts by email or phone.

The landlord referred to a May 21, 2014 letter from the tenants to the landlord which indicates that the eviction notice was invalid. This letter is in reference to the May 15, 2014 email described above as the tenants indicate to the landlord that the notice to end tenancy, whatever the reason, must be in the prescribed form.

The tenant testified that "estoppel" should apply given the December 19, 2013 email in which the tenant stated supports that the landlord was aware that he was operating a business, and then six months later issued a 1 Month Notice based on that business.

Counsel stated that there is a serious problem regarding insurance for the rental property as the male tenant denied that he has a business there when the insurance company called in July of 2014. There was no documentary evidence submitted by the landlord from the insurance company.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Once the tenants disputed the 1 Month Notice in accordance with the timeline provided for pursuant section 47 of the *Act*, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled, and will have no force or effect.

Regarding the cause listed above, the agent stated that the material term related to the male tenant's business and that the business violated section 14 of the tenancy agreement, which counsel and the landlord considered a material term of the tenancy agreement. Neither section 14 of the tenancy agreement or the email dated May 15, 2014 alleging a breach of the tenancy agreement; make reference to the alleged breach being a breach of a "material term" of the tenancy agreement.

Residential Tenancy Branch Policy Guideline 8 - Unconscionable and Material Terms states that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Based on the above, I find the landlord failed to indicate that the breach was a material term of the tenancy in the May 15, 2014 email to the tenants and for which the 1 Month Notice dated June 25, 2014 was based upon.

Furthermore, I accept the tenant's testimony that "estoppel" applies in this matter. Estoppel is a rule of law that states when person A, by act or words, gives person B reason to believe that a certain set of facts upon which person B takes action, person A cannot later, to his (or her) benefit, deny those facts or say that his (or her) earlier act was improper. In effect, estoppel is a form of waiver, when person A does not enforce their rights and person B relies on this waiver. Therefore, I find that the landlord's email dated December 19, 2013 supports that the landlord was aware that the tenant was operating a business from the rental unit, which conflicts with the landlord's testimony that he was not aware, and that the landlord is unable to then rely on an alleged breach of a material term six months later by issuing a 1 Month Notice based on the tenant's business.

I find it reasonable that if the tenant's act of operating a business in the rental unit was so egregious that the landlord would have issued the 1 Month Notice in December of 2013, when the landlord was aware the tenant was operating a business. I further find there is insufficient evidence to support that section 14 was a material term of the tenancy agreement. Based on the above, **I find** that the landlord has provided insufficient evidence to support that the tenants breached a material term of the tenancy as alleged in the 1 Month Notice. As the landlord has failed to prove that the 1 Month Notice was valid, **I cancel** the 1 Month Notice dated June 25, 2014.

I ORDER that the tenancy continues until ended in accordance with the *Act*. The 1 Month Notice dated June 25, 2014 is cancelled and is of no force or effect.

As the tenants' application had merit, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00** pursuant to sections 67 and 72 of the *Act*. **I ORDER** that the \$50.00 filing fee be deducted by the tenants from their rent for a future month on a one-time basis in full satisfaction of the recovery of the tenants' filing fee.

Conclusion

The 1 Month Notice dated June 24, 2014 has been cancelled and is of no force or effect. The tenancy continues until ended in accordance with the *Act*.

The tenants have been ordered to deduct \$50.00 from their rent for a future month on a one-time basis in full satisfaction of the recovery of the tenants' filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 8, 2014

Residential Tenancy Branch

