



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for more time 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 unpaid rent or utilities; and to recover the filing fee from the landlord for the cost of the application.

One of the tenants and the landlord attended the hearing and both gave affirmed testimony. The parties were also 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. No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing it was determined that the Tenant's Application for Dispute Resolution shows an dispute address that is in fact the address of the landlord, and not the address of the rental unit. The application is amended to show the correct address of the rental unit with the consent of both parties.

Issue(s) to be Decided

- Have the tenants established that more time should be granted to dispute a notice to end the tenancy given by the landlord?
- Has the landlord established that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities has been issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that a 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act* and specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began in June or July, 2014. The landlord's friend took care of renting it because the landlord was recovering from surgery at the time. No written tenancy agreement was prepared, no move-in inspection report was completed, and no security deposit or pet damage deposit was collected from the tenants. One of the named tenants has moved out of the rental unit, but the other tenant still resides there. Rent in the amount of \$850.00 per month is payable in advance on the 1st day of each month.

The landlord further testified that the tenants failed to pay rent in full for the month of November, 2014 leaving a balance outstanding of \$350.00. The landlord served one of the tenants personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 2, 2014. A copy of the notice has been provided and it is dated December 2, 2014 and contains an effective date of vacancy of December 11, 2014 for unpaid rent in the amount of \$1,200.00 that was due on December 1, 2014. The tenants have not paid any rent since the issuance of the notice and now the arrears have accumulated to \$2,050.00, plus utilities.

The landlord also testified that the rental unit has a basement suite, which the tenant resides in, as well as another rental unit occupied by 2 women. The tenant had a party which started early in the afternoon. The landlord was there at about 3:30 and the party was well on its way. After the landlord left the 2 other tenants attended the party. The police were called and the woman's windshield was smashed. The landlord was told that the tenant had smashed it and admitted it to one of those tenants. The landlord gave the tenant personally a 1 Month Notice to End Tenancy for Cause on November 30, 2014. A copy of that notice has also been provided and it is dated November 28, 2014 and contains an expected date of vacancy of January 1, 2015. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord did not talk to the police or the tenant about the incident. The landlord first became aware of it the day after it happened by way of a voice message from the tenant who suffered the damage. The landlord went there and talked to her; she told the landlord that the tenant had smashed the windshield and that she felt threatened, and stated that either he had to go or she would be moving. The landlord went home

and prepared the notice to end the tenancy, and returned on the last day of the month to serve it on the tenant.

The tenant testified that he did not smash the windshield. The two women arrived at the party one at a time and the second one assaulted the tenant's sister and his girlfriend. The tenant removed her by pushing her out the door and told the other to leave, and she did. The 2 women reside in a cottage on the rental property. Within 15 minutes the police were there and one of the women was taken into custody and charged with assault.

The tenant received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 2, 2014 and went to the Residential Tenancy Branch about 2 days later. Upon being told that he had to pay a \$50.00 filing fee, and not having the money, the tenant returned to file the dispute on December 10, 2014. The tenant was late filing the dispute because he didn't have the filing fee within the time required.

The tenant also testified that he was short of rent the amount of \$250.00 for November and intended to pay it on payday; rent fell between paydays. Then the tenant got the 1 Month Notice to End Tenancy for Cause and didn't know if he should pay the rent pending the result of this hearing. The tenant usually paid rent by paying the tenants in the upper unit, but the tenant got mixed messages. He was told that the rental unit is illegal and once he received the notice he didn't know what to do.

Analysis

Firstly, the *Residential Tenancy Act* provides a tenant with 10 days from the date of service to dispute a 1 Month Notice to End Tenancy for Cause, and 5 days from the date of service to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant received the 1 Month Notice on or about the last day of November, 2014 and received the 10 Day Notice on the 2nd of December, 2014, and filed the application for dispute resolution on December 10, 2014. I find that the tenant has disputed the 1 Month Notice within the time required under the *Act*, but not the 10 Day Notice. The tenant has applied for more time to dispute that notice and stated that he didn't have the filing fee, but disputed it when he did have the means. I accept that testimony because the tenant didn't have enough money to pay the rent in full either. I hereby grant the tenant more time to dispute the 10 Day Notice.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Act*, which can include the reasons for issuing it. In this case, the landlord did not talk to the tenant at all about the incident at the party, nor did he talk to the police. The landlord only talked to the

person who suffered damages to her motor vehicle and made a deduction that the tenant caused the damage. The tenant denies that and testified that the 2 women caused the police to be called after one of them assaulted 2 guests of the tenant. I find that the landlord has failed to establish that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and I hereby cancel the 1 Month Notice to End Tenancy for Cause.

With respect to the 10 Day Notice, the tenant admits that rent in full for November was not paid, and that no rent has been paid since. A tenant is required to pay rent whether or not the landlord has complied with the *Act* or the tenancy agreement. I see no reason to cancel the notice.

Since the tenant has not been successful in continuing the tenancy, I decline to order that the tenant recover the filing fee from the landlord.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause issued by the landlord and dated November 28, 2014 is hereby cancelled.

The tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the landlord on December 2, 2014 is hereby dismissed without 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: January 08, 2015

Residential Tenancy Branch

