



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF
 MT, CNC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for more time to dispute a notice to end the tenancy, for an order cancelling a notice to end tenancy for cause, and to recover the filing fee from the landlord.

Both tenants and the landlord attended the hearing and the landlord was represented by an agent. The parties and the agent all gave affirmed testimony and the parties provided evidentiary material in advance of 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.

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

During the course of the hearing, the issue of jurisdiction was raised. That issue is also dealt with in this Decision.

Issue(s) to be Decided

- Does the *Residential Tenancy Act* apply to this dispute?
- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?
- Have the tenants established that more time should be given to dispute the notice?
- Should the notice to end tenancy be cancelled?

Background and Evidence

The landlord's agent testified that she is the daughter of the landlord and one of the tenants is also the daughter of the landlord. The tenant and spouse moved into the rental unit in April, 2014 and still reside there. No rent is payable, no security deposit or pet damage deposit were paid to the landlord, and no written tenancy agreement exists. The rental unit is a manufactured home on property owned by the landlord which also contains a separate home of the landlord. The landlord's agent stated that if a tenancy does not exist, the landlord submits that it is a license to occupy.

The landlord's agent further testified that the tenants were served with a 1 Month Notice to End Tenancy for Cause on December 26, 2014 by sliding it under the door of the rental unit. A copy of the notice has been provided and it is dated December 26, 2014 and contains an effective date of vacancy of January 31, 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;
 - put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord;
- Tenant has not done required repairs of damage to the unit/site.

The landlord's agent testified that she trusts that the repairs required by the tenants for damage caused by the tenants have been completed.

The landlord's agent further described an incident wherein the 16 year old child of the tenants arrived at the landlord's residence in her pyjamas crying, and the landlord put her to bed. The child's father, being one of the tenants, arrived at the landlord's residence screaming, yelled profanities at the landlord, and broke through the locked screen door to gain access. The child ran out the back door. The landlord attempted to call the landlord's agent but the other tenant arrived during the altercation, took the phone out of the landlord's hand and disconnected it. The landlord's agent attempted to call the parties, and eventually attended finding the police at the landlord's residence. The landlord's agent went into the residence while the tenants remained outside with police. A short time later the police went into the landlord's residence and told the landlord that they would tell the tenants to stay away from the landlord's residence, and that their concern was about the child. The child had gone to a neighbour's home and

said she did not want to go home. The police escorted the child to get clothing and the child stayed with the landlord.

The tenant has apologized in writing to the landlord, however the landlord is 82 years old and her husband is 86 years old and is not in good health. The landlord is afraid of the tenant's aggression which has escalated to this behaviour and the landlord does not want to live next door anymore.

The landlord testified that she does not want to set aside the notice but agrees that due to a lot of snow and the fact that the tenant is expecting another child, the landlord is agreeable to an Order of Possession effective at the end of March, 2015. She stated that she is not willing to extend the date of vacancy to the end of August because she does not feel she can put up with what she did last summer, although she did not specify.

The first tenant testified that she is the daughter of the landlord and is due to have a baby at the end of March, 2015. After being served with the notice to end the tenancy the tenants needed to seek legal advice on whether or not the *Residential Tenancy Act* applies. Due to the holiday season, the tenant called legal aid on January 8, 2015, and was busy having picked up more shifts at work. The tenant's husband has a mental health condition and physical and motivational problems which prevented him from filing the dispute sooner.

The tenant also testified that there has never been a rental agreement, and this is the third time they have inhabited the dwelling since 2007. There has never been a move-in or a move-out condition inspection, or any requirement to remove all belongings when they did move out. There is no written tenancy agreement, no rent or security deposit paid. It is a family dwelling and the landlord's agent has also resided in the rental unit.

The tenant also testified that at the beginning of this tenancy, the bathroom in the rental unit still needed to be completed so the tenants had to use the landlord's bathroom. The tenant's daughter still goes there to shower.

The tenant further testified that the incident was a 1-time event, and her husband has not been at the landlord's residence since, and has apologized. The tenant stated that the landlord's fears are unfounded, and the only physical altercation was the landlord slapping the face of the tenant's husband. The tenant does not know what the landlord meant about last summer.

The second tenant testified that he had an issue with his daughter, which was not hostile, but the child ran out. His wife told him to go get her, but the tenant couldn't find her and called the police. Lights were on at the landlord's residence so he went there and asked if the child was there. The landlord told the tenant to go away and accused him of child abuse. The tenant just wanted to know if the child was there. He pulled on the screen door, but not hard, and found the child in bed. The tenant told the child to go home, but all the time the landlord was behind him screaming at him to get out and calling him a child abuser. The tenant told the landlord to stop but the landlord slapped the tenant. The daughter ran out and the tenant's wife attended. The tenant claims he was antagonized by the landlord, and stated that if the landlord had told her that the child would be staying the night, the incident would not have escalated.

The tenant also testified that he started new drugs on December 20, 2014 for clinical depression, and has difficulty focusing and staying awake.

Analysis

Firstly, with respect to the jurisdictional issue, the *Residential Tenancy Act* defines a landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

The *Act* defines a tenancy agreement as:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

There is no definition in the *Act* of a “License to occupy,” however I refer to Policy Guideline 9 – Tenancy Agreements and Licenses to Occupy which states:

“This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of “tenancy agreement” in the *Residential Tenancy Act* includes a license to occupy. However, the *Manufactured Home Park Tenancy Act* does not contain a similar provision and does not apply to an occupation of land that under the common law would be considered a license to occupy.

In this case, it is clear that the parties have a family relationship and occupancy is given because of generosity rather than business considerations, however I find that the *Residential Tenancy Act* applies.

The tenants seek more time to dispute the notice to end the tenancy given by the landlord and one tenant testified that her spouse was not able, due to his health conditions, to file the dispute on time, and that due to the holiday season and working extra shifts it was difficult to get legal advice and file the dispute on time. The notice was served on the tenants on December 26, 2014 by sliding it under the door of the rental unit, which I find is deemed to have been served on December 29, 2014. The tenant testified that she called legal aid on January 8, 2015 and the Tenant’s Application for Dispute Resolution was filed on January 15, 2015. The latest time permitted under the *Act* to dispute the notice was January 8, 2015. If the tenant spoke to legal aid on January 8, 2015 surely the tenant would have been told that the latest time to file a dispute would be that day, but the dispute wasn’t filed until a full week later. In the circumstances, I am not satisfied that the tenants’ failure to file the application on time was due to circumstances beyond the tenants’ control, and the tenants’ application for more time to dispute the notice is hereby dismissed.

The *Residential Tenancy Act* also states that where a tenant does not dispute a notice to end the tenancy the tenant is conclusively presumed to have accepted the end of the tenancy. Therefore, having found that the tenants have not disputed the notice within the time required, I also dismiss the tenants’ application for an order cancelling the notice and the application for recovery of the filing fee.

I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*, and since the effective date of vacancy has passed, the landlord is entitled under the *Act* to an Order of Possession on 2 days notice to the tenants. The landlord testified that she would be willing to end the tenancy later, however I leave it to the landlord to determine when to serve the Order on the tenants.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$50.00.

These orders are final and binding and may be enforced.

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: February 12, 2015

Residential Tenancy Branch

