



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Introduction

This hearing dealt with an application by the tenants for orders setting aside a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Non-Payment of Rent or Utilities. The hearing started on May 20, 2015. The parties were not able to complete their testimony within the time allotted for the hearing and it was adjourned to June 2, 2015, at 1:00 pm, a date and time convenient to all participants. The parties were able to complete their testimony on June 2.

Between the two hearing dates the landlord filed some additional written evidence with the Residential Tenancy Branch. She said these were copies of documents already served on the tenants in advance of the landlord's application for an order of possession set for June 22. The tenants acknowledged receiving all of the documents, except the undated letter from a realtor, in their mail box on May 17. I allowed all of the evidence except the letter from the realtor.

Issue(s) to be Decided

Is either the 10 Day Notice to End Tenancy for Non-Payment of Rent or Utilities dated May 2, 2015 or the 1 Month Notice to End Tenancy for Cause dated April 1, 2015 valid?

Background and Evidence

This tenancy started February 15, 2014 although the tenants moved in a couple of days early. Both parties testified that there is a written tenancy agreement; neither party filed a copy in evidence. At first the monthly rent was \$1200.00. In April the parties agreed that the tenants would rent an additional room and the monthly rent would be increased to \$1400.00. The rent is due on the first day of the month. The tenants paid a security deposit of \$600.00.

The rental unit is the upper level of a duplex. It is owned by the daughter, who lives in another city, and managed by her mother. The daughter also owns the other side of the duplex, which also has two rental units. The mother lives in the neighbouring house.

The homes are close enough together that the parties can speak to each other through their kitchen windows.

The mother was the principal witness for the landlord. Both the mother and the daughter are referred to as the "landlord" in this decision.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated April 1, 2015. The landlord says she posted the notice and saw the female tenant remove the notice from the door. She says this occurred on April 3. The tenants say the notice was posted on April 6. The tenants filed this application dispute the notice on April 7.

The reasons stated on the notice are:

- Tenant is repeatedly late paying rent.
- Tenant has allowed an unreasonable number of occupants in the unit/suite.
- Tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord; or has put the landlord's property at significant risk.
- Tenant has engaged in illegal activity.

The tenants testified that they always paid their rent in cash. The landlord always gave receipts for the rent paid. However, she would only give one receipt for the month so if the tenants paid the rent in more than one installment the date on the receipt reflects the date on which the final installment for the month was paid.

Neither party filed copies of the rent receipts but both gave undisputed evidence about the dates of the receipts. The tenant testified that in 2014 the dates of the receipts were February 12; March 1; March 31; April 30; June 1; July 2; August 6; September 5; October 4; November 4; and December 3. The landlord testified that in 2015 the dates of the receipts were January 9; February 7; March 9; April 4; and May 2.

The tenants testified that the following factors presented challenges to payment of the rent on the first day of the month:

- their pay days did not fall on the first (the female tenant is paid on the 5th and 20th of each month and the male tenant is paid on Fridays);
- the landlord was busy at temple on weekends;
- they work shiftwork; and,
- when the male landlord was sick, which he was on more than one occasion, they only had one income.

The tenants testified that the landlord did not have a problem with split payments.

The landlord testified that the tenants did approach her about paying half the rent on the 5th day of the month and the other half on the 20th but she did not agree to that proposal because the mortgage payment is due on the first day of the month. The landlord testified that whenever she approached the tenants about the rent they always made excuses. She also testified that she never served the tenants with a 10 Day Notice to End Tenancy for a late rent payment.

The landlord and the tenants have had an acrimonious relationship.

The landlord had the house listed for sale for six months. The house was taken off the market in December because it was winter. After that the house was shown privately to some friends of the landlord's son. The last showing was December 18.

The landlord says she gave prior notice of every showing but the tenants were not cooperative. She testified that their failure to cooperate with the showings is one of the main reasons for wanting to end this tenancy. The tenants say they were never served with a written notice of entry and that they allowed every showing requested, no matter how short the notice.

The landlord and a witness testified that the male tenant swears at the landlord and calls her filthy names. The tenants and their witnesses testified that the male tenant did not swear at the landlord; the landlord frequently yelled at the tenants and swore at them; and the landlord called the female tenant's place of employment to report that she was stealing groceries from work.

The parties have had heated arguments about where the tenants blow the snow in the winter; where the tenant's nephew parked his vehicle; and who was responsible for cleaning up the blood on the sidewalk in front of the rental unit. One of these arguments resulted in the police being called. The police attended. No charges were laid.

The landlord says there are too many people staying at the house; the tenants say any guests they have are only there for the weekend.

New tenants moved into the lower unit at the beginning of April. Several witnesses testified about the constant fighting, drug use, loud noise, and police attendances at this unit. The tenants say they are complaining constantly to the landlord about these tenants but she has not taken any action.

The landlord did state that she had no evidence of illegal activity by the tenants.

The landlord filed a copy of the BC Hydro invoice for the period January 23, 2015 to April 14, 2015. The landlord testified that although the written tenancy agreement does not contain a provision for payment of the utilities she and the tenants entered into an oral agreement regarding the hydro bill after the downstairs tenants moved out. The landlord also testified that the lower unit has been vacant since January; the male tenant is building and fixing things in his shop; he uses power tools for these activities; and is using extra power.

The landlord said she has asked for payment of the hydro bill. Although asked repeatedly whether she had ever requested payment in writing she did not say that she had.

On May 2, 2015, the landlord issued a 10 Day Notice to End Tenancy for Non-Payment of Rent or Utilities claiming unpaid utilities in the amount of \$252.81. The note on the notice says "using extra hydro made a workshop in the house". The notice also states that a written demand for payment was made on March 31, 2015.

The tenants testified that they never paid anything for hydro; they thought the rent included the hydro; and the first written notice they received about the hydro was the 10-Day Notice to End Tenancy.

On May 5, 2015, the tenants amended this application for dispute resolution to include a request for an order setting aside the notice.

The tenants say they want to move out of this rental unit; the only obstacle appears to be the cost of moving. They have not paid the June rent nor have they given written notice to end tenancy.

Analysis

10 Day Notice to End Tenancy for Non-Payment of Rent or Utilities dated May 2, 2015.

Section 46(6) of the *Residential Tenancy Act* provides that if the written tenancy agreement required the tenant to pay utility charges to the landlord and the charges remain unpaid for more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the utility charges as unpaid rent and may give the tenants a 10 Day Notice to End Tenancy for Unpaid Rent for Utilities.

As the evidence of both parties is that the tenancy agreement does not required the tenant to pay utility charges the landlord may not serve or enforce a 10 Day Notice to End Tenancy for those charges. The 10 Day Notice to End Tenancy for Non-payment of Rent or Utilities dated May 2, 2015, is set aside and is of no force or effect.

This decision does not include any finding as to whether the tenants are obliged to pay hydro charges pursuant to any oral agreement. That issue will be heard and determined in the hearing set for June 22, 2015.

1 Month Notice to End Tenancy for Cause dated April 1, 2015.

Whether the 1 Month Notice to End Tenancy for Cause was posted on April 1, April 3 or April 6 makes no difference legally. The effective date of a notice served on any of those dates is May 31 and the tenants' application disputing the notice was served within the time required for any of those dates.

Section 47(1)(c) allows a landlord to end a tenancy where a tenant is repeated late paying rent. Three late payments are the minimum number sufficient to justify a notice under this section. (See *Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent.*)

The evidence is that the tenants have not paid the rent on time since July 2014. Although the landlord did not take any formal legal action regarding the late payment of rent for many months there is no evidence that the landlord actually agreed to a consistent late payment of rent. Accordingly, I find that the 1 Month Notice to End Tenancy for Cause dated April 1, 2015 is valid. The tenants' application for an order setting aside this notice is dismissed.

Once one ground for ending the tenancy has been upheld there is no need to make a determination on the validity of any of the other reasons claimed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. As of the date of the hearing the tenants had not paid the June rent. Accordingly, the landlord is granted an order of possession effective two days after service on the tenants. If the tenants

have paid all or part of the June rent the landlord will not be able to enforce the order of possession until after the date to which the rent has been paid.

Conclusion

- a. The 10 Day Notice to End Tenancy for Non-Payment of Rent or Utilities dated May 2, 2015 has been set aside and is of no force or effect.
- b. The 1 Month Notice to End Tenancy for Cause dated April 1, 2015 has been upheld for the reasons set out above and pursuant to section 55(1) the landlord has been granted an order of possession effective two days after service. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- c. As the tenants were only partially successful on their application no order regarding the fee they paid to file it will be made.

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: June 03, 2015

Residential Tenancy Branch

