



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD.
and [tenant name suppressed to protect privacy]

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"), and to recover the cost of the filing fee.

The tenants, a legal advocate for the tenants, and an agent for the landlord (the "agent") attended the teleconference hearing. Both parties confirmed that they received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Are the tenants entitled to the recovery of the cost of their filing fee under the *Act*?

Background and Evidence

The tenants confirmed that they received a 1 Month Notice dated May 22, 2015 on May 22, 2015. The effective vacancy date of the 1 Month Notice is listed as June 30, 2015. The tenants applied to dispute the 1 Month Notice on May 25, 2015 which is within the permitted 10 day timeline pursuant to section 47 of the *Act*. The landlord listed the following reason on the 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.

The parties confirmed that the tenants continue to occupy the rental unit. The tenancy is a fixed term tenancy that is scheduled to end on November 30, 2015.

The agent testified that the 1 Month Notice was issued after the tenants refused to remove a storage shed on the tenants' patio that they installed, which was higher than the height of the patio fence. The tenants did not deny that the storage shed was higher than the fence but claim the shed is not unsightly. The tenants were unwilling to consider removing their shed and were of the position that they were not violating the tenancy agreement by having the shed on the rental unit property.

The agent referred to section 14 of the tenancy agreement submitted in evidence to support the one cause listed on the 1 Month Notice. Section 14 reads in part:

“...The tenant will not make or cause any structural alteration to be made to the rental unit or residential property....”

[reproduced as written]

The agent testified that although the landlord did not have an addendum to the tenancy agreement that sets out the maximum height of structures such as a storage shed, the agent stated that with new tenants, they restrict patio furniture etc, to not exceed the height of the patio fencing. The agent confirmed that there was no documentary evidence submitted that indicates the new wording she was referring to with respect to new tenants being restricted to the height of patio furniture or structures in relation to the height of the fencing. The parties agreed that the tenancy agreement did not specifically restrict the height of structures such as storage sheds.

Analysis

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

When a tenant disputes a 1 Month Notice, 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.

I find that the landlord has provided insufficient evidence to prove that the 1 Month Notice is valid, as the landlord failed to include a term of the tenancy agreement or addendum to the tenancy agreement that restricts the height of a structure such as a storage shed in relation to the fencing. I do not accept that by adding a storage shed, the tenants have structurally altered the rental unit or residential property based on the

evidence before me, as claimed by the agent. As a result, **I cancel** the 1 Month Notice dated May 22, 2015. **I ORDER** that the tenancy continue until ended in accordance with the *Act*.

As the tenants were successful with their application, **I ORDER** the tenants to deduct \$50.00 from a future month's rent on a one-time basis in full satisfaction of the recovery of the \$50.00 filing fee.

Conclusion

The 1 Month Notice dated May 22, 2015 has been cancelled and the tenancy has been ordered to continue until ended in accordance with the *Act*.

The tenants have been ordered to deduct \$50.00 from a future month's rent on a one-time basis in full satisfaction of the recovery of the \$50.00 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: July 14, 2015

Residential Tenancy Branch

