



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HILLTOP MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants to cancel a notice to end tenancy for cause.

The female Tenant appeared for the hearing and was represented by her daughter who acted as her agent and translator. An agent of the Landlord also appeared for the hearing. All the parties provided affirmed testimony. While the parties were given an opportunity to call witnesses during the hearing, no witnesses were called.

The Landlord’s agent explained that the Tenants had served the documents for this hearing by placing them into the mail slot of their business office. The Landlord’s agent testified that the building manager stated that she had received the Tenants’ Application on June 8, 2015. The Landlord’s agent submitted that because the Tenants made the Application on June 5, 2015 they were not served in a timely fashion.

However, I informed the Landlord’s agent that the documents were not prepared by the Residential Tenancy Branch for issuing to the Tenants for service until June 11, 2015. Therefore, the building manager could not have received them on June 8, 2015. The Tenant’s daughter testified that they were put in the Landlord’s business office mail slot on June 12, 2015. The Landlord’s agent was asked whether he had received all the Tenants’ documents and how he had been affected by the method of service used by the Tenants, to which he replied that he was not disadvantaged.

While the Tenants did not use a method of service stipulated by Section 89 of the *Residential Tenancy Act* (the “Act”), I find that the Landlord did receive the paper work in a short period of time after it was issued to the Tenants by the Residential Tenancy Branch. The Landlord submitted an evidence package in accordance with the Rules of Procedure and the Landlord’s agent had no concern with moving forward with the

hearing. Based on the foregoing, I determined that the Landlord received the documents for this hearing pursuant to Section 71(2) (c) of the Act.

The Landlord's agent confirmed that the Tenants had been served with a 1 Month Notice to End Tenancy for Cause (the "Notice") on May 26, 2015 by registered mail. The Tenants confirmed receipt of the Notice on May 26, 2015 and disputed the Notice on June 5, 2015. Therefore, I determined that the Tenants had disputed the Notice within the ten day time limit stipulated by Section 47(4) of the Act.

The Landlord presented evidence and made submission relating to allegations that the Tenants' son had urinated and put excrement and graffiti on the walls of the common areas of the rental property on several occasions. The Notice was issued to the Tenants for the following reasons:

- 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

The Tenants' daughter submitted that the Landlord's evidence was not sufficient to prove that her brother (the Tenants' son) was responsible for these allegations which the Tenants disputed.

At the conclusion of the hearing, I offered the parties an opportunity to settle the matter between them. As a result, the Landlord agreed to withdraw the Notice to allow the tenancy to continue. Policy Guideline 11 to the Act explains that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy unless there is consent from the party to whom it is given. The Tenant's daughter agreed to this course of action.

The Landlord explained that he will issue the Tenants with a written breach letter detailing the issues with the Tenants' son and this will put the Tenants on sufficient notice that if incidents occur in the future, the Landlord will be at liberty to issue a new Notice. The Landlord was informed that he would still bear the burden of proof for a future notice to end tenancy for cause.

The Tenants are cautioned that if the Landlord is able to prove that the incidents he alleged in this hearing are continuing after the Tenants are given a breach letter, then this could lead to the ending of the tenancy. I encourage the Tenants to sit down as a family and discuss these issues in order to ensure that their tenancy can successfully continue.

The parties confirmed at the end of the hearing their voluntary agreement to resolution in the above manner.

Conclusion

The Landlord and Tenant both agreed that the Notice dated May 26, 2015 would be withdrawn and the tenancy will continue until such time it is ended in accordance with the Act.

As I have made no legal findings in this matter, I dismiss the Tenants' Application. The Landlord is at liberty to issue a new notice to end tenancy if the alleged issues continue.

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: July 30, 2015

Residential Tenancy Branch

