



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing, and each gave affirmed testimony. The tenants also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the landlord. The parties were given the opportunity to question each other respecting the evidence and testimony given, 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.

Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*, and more specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 10, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$1,700.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$750.00 as well as a pet damage deposit in the amount of \$250.00, both of which are still held in trust by the landlord. A copy of the tenancy agreement has been provided by the tenants, which the landlord testified is a true copy of the agreement signed by the parties.

The landlord further testified that on June 2, 2015 the landlord caused the tenants to be served with a 1 Month Notice to End Tenancy for Cause by another person who personally handed it to one of the tenants. A copy has been provided by the tenants, and it is dated June 1, 2015 and contains an expected date of vacancy of June 30, 2015. The reasons for issuing the notice are:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk.

With respect to late rent, the landlord testified that the tenants paid February rent but the cheque bounced and the tenants re-paid it by cash on February 16, 2015. March rent was paid on the 5th of the month, May rent on the 6th and July rent on July 12, 2015. No receipts have been given to the tenants, and the tenants have not requested any.

With respect to the second reason for issuing the notice the landlord testified that on May 29, 2015 a realtor walked through the rental unit and saw hot plates next to wooden shelving in the basement of the rental unit and told the landlord that she saw candles on the shelving unit and it didn't look safe. The realtor has provided the landlord with an Affidavit, but it has recently been received by the landlord and not available as evidence for this hearing. The Affidavit states that there were pots on the plates, the plates were on and had liquid in them, unattended and close to shelving. The tenants have no contract with the landlord respecting a business, and one of the tenants told the landlord that they had an on-line dietary supplement business.

The landlord also wrote a letter to the tenants, which was served with the notice. A copy has not been provided, however the landlord testified that it talked about late rent and candle wax on heaters next to wooden shelving in the basement of the rental unit and that the landlord's insurance doesn't cover this kind of activity or business. The letter says it is a safety hazard and must stop immediately and the tenants are to vacate the rental unit by June 30, 2015. No prior communication about it took place, and no letters or correspondence was given to the tenants prior.

The landlord also testified that the tenants were given a letter dated April 16, 2015, a copy of which has been provided by the tenants, and the landlord agrees it is a true copy. The letter is entitled "Notice of Upcoming Property Sale" and agreed that the notice states that the landlord decided to sell the property, the tenants could choose to end the tenancy by providing a notice in writing by May 31, 2015 and that the landlord is available for a great reference if the tenants chose to move out.

The first tenant testified that the tenants were only late with the rent in February and May, 2015. Rent has been paid in cash on the first day of all other months until July, 2015 because the landlord served a notice saying the tenants had to be out by the end of June, 2015. Receipts were requested numerous times and the landlord promised to give them, but never did. On the last occasion, the landlord had her son answer the door and the landlord still didn't have receipts.

At the beginning of the tenancy the tenants told the landlord about their business and how they got into the business of Ear Candles. The tenants make and distribute them to practitioners, health food stores and a few pharmacies – not on-line and not to the general public. There is no danger. They are induction plates and only heat up 100% stainless steel pots. It's the pot that gets warm and there is no open flame or heat source whatsoever. Wooden shelving around it is safer because they only heat stainless steel and the plates only heat to 62 or 63 degrees, and the wax in the pot doesn't get hotter than 75 degrees. Work area has hard plastic sheeting and the concrete floor is completely covered. The tenants have 2 induction plates. One is constant; the other is for use by the tenants' daughter a couple times a week. The tenant has been doing this for 20 years, and never once told the landlord anything about on-line dietary supplements.

The tenant further testified that when they moved in there was no inspection, and the tenants are worried about the landlord's letter that accompanied the 1 Month Notice to End Tenancy for Cause. It states: "I will do a walkthrough of the property on July 2, 48 hours after you've left to assess the damage deposit return. Please see below for the following deductions: Cleaning fee \$300.00; stained carpets \$250.00; wall damage, holes, nails, etc. which will be assessed at the time of inspection." The tenant testified that here's a mass of holes in all walls, the unit has never been painted, there are no closet doors, and the tenant is worried that because there wasn't a walkthrough before hand, the damage will be blamed on the tenants. The landlord has never done an inspection since the beginning of the tenancy nor requested it and has never been inside the rental unit. The landlord has only been at the door to pick up rent and her mail.

The second tenant testified that they've only been late paying rent a couple of times. They were only late with this month (July, 2015) because the landlord gave the letter ordering the tenants to stop the business, and customers pay within 30 days. If the tenants don't get paid they can't pay the rent.

The tenant also testified that the house was for sale when the tenants moved in and the landlord told the tenants she wouldn't be selling it and the sign came down. However, the sign was put up again in May, 2015.

The tenant also testified that the letter that arrived with the notice to end the tenancy seems very convenient because it mentions damage that was already there when the tenants moved in. The house is still listed for sale and the tenants are letting people in to look at it.

The tenants seek an order cancelling the notice to end the tenancy given by the landlord and recovery of the \$50.00 filing fee.

Analysis

Where a notice to end a tenancy given by a landlord is disputed by a tenant, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*, except that since rent is payable on the 1st day of each month, and it was served on the 2nd day of a month, the effective date of vacancy must be at the end of the following month, or July 31, 2015.

The tenants dispute the reasons for issuing the notice. The landlord testified that the tenants were late 4 times, the last being in July, 2015, however the notice was issued in June, 2015. Therefore, that payment cannot be considered because it wasn't due yet when the notice was issued. A tenant must be late with rent at least 3 occasions before repeated late rent can be a reason to end a tenancy. The tenants both testified that they were only late with the rent on 2 occasions prior to receiving the notice. The landlord admits to not issuing receipts, and I have no evidence of the landlord showing dates that payments were made or anything to corroborate the landlord's testimony. Where it boils down to one person's word over another, the allegation has not been proven.

With respect to the second reason for issuing the notice, the landlord has never been in the rental unit since the beginning of the tenancy and has not exercised any right to inspect. There is absolutely no evidence before me that the tenants have put the landlord's property at significant risk. I am certain, knowing that the tenants have a child, that they would not put their own safety at risk, and I accept the testimony of the tenant that the plates do not get hot enough to cause any risk and only heat stainless steel pots enough to melt wax.

The notice to end the tenancy is cancelled and the tenancy continues.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$50.00 filing fee. I hereby order that the tenants be permitted to reduce a future months' rent by that amount, or may otherwise recover it.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated June 1, 2015 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00, and I order that the tenants be permitted to reduce rent for a future month as recovery, or may otherwise recover the amount.

This order is 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: July 28, 2015

Residential Tenancy Branch

