



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 the tenancy for cause issued by the landlords.

Both landlords attended the hearing and one gave affirmed testimony. One of the tenants attended representing both tenants, and he also gave affirmed testimony. The parties were given the opportunity to question each other. No issues with respect to service or delivery of documents were raised. No evidentiary material has been provided by either party.

Issue(s) to be Decided

Have the landlords established that the notice to end the tenancy given to the tenants was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this tenancy began on October 1, 2008 as a fixed term tenancy ending on September 30, 2009 and then reverting to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$2,200.00 is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,000.00 which is still held in trust by the landlords, and no pet damage deposit was collected.

The landlord further testified that the tenants were served with a 1 Month Notice to End Tenancy for Cause on August 31, 2015 or September 1, 2015, but a copy has not been provided for this hearing. The landlord testified that the notice was dated August 31, 2015 and contained an expected date of vacancy of December 31, 2015. The landlord

received an email from the tenant right away saying that he didn't accept the reason the notice was given. The email is dated September 4, 2015 and acknowledges that the tenant received it on September 1, 2015 and that he filed a dispute. The reason for issuing the notice is: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The rental unit is a suite in the upper level of a house and the landlord's mother resides in a suite in the lower level. The landlords do not reside in the house. The landlord's mother is wheel-chair bound and has Alzheimer's and has a Community Health Worker. The Worker was told to not allow anyone in the home. On August 29, 2015 the Worker called the landlord, sounding frightened saying that a person was banging on the door and ringing the doorbell and continued to do so, so she answered the door. The tenant was the person at the door who pushed his way in and shouted at her that he needed to see if the door that goes to the upper level was open. She kept asking him to leave, but he had locked himself out of his rental unit. He was getting mad and showing anger because of the locked door and he wanted a key. She didn't have a key and the tenant did not call the landlords. The Worker said she was going to call police but the man left and she phoned the landlord. The tenant did not contact the landlord.

The landlord also testified that her mother would have recognized the tenant; they had been friends and had dinners together, however due to her diminishing health condition, the landlord's mother only speaks now in her native language, and the Worker did not know the tenant. The tenant pushed his way in and checked the door to the adjoining suites, which was locked from the tenants' side, so he could not gain entry. Later, the tenant emailed the landlord saying that he had climbed a ladder to get in. The tenant has been refusing to talk to the landlord, and has 3 phone numbers for the landlords.

The tenants have a child who attends school nearby, and the landlords do not want to interrupt the school year, however the tenants had indicated they would be moving prior to the start of this school year, but did not give notice and did not move. The landlords completed the notice to end the tenancy with a much later effective date than required to reduce the impact on the tenants' child, the tenant's work and pets.

The tenant testified that the landlord's mother is well known to him and his family, and she has had a full-time caregiver, who is not the person in the unit that the mother resides in on August 29, 2015. At the time, there was a bad storm and the tenant was on his way home from having his wife's vehicle serviced and realized that the house key was not on the key ring. The tenant knocked on the window and waved to the landlord's mother and she waved back and said the tenant's name. The tenant looked in the window and didn't see anyone going to the door. He rang the doorbell and continued to knock. Believing that the care-giver was there, the tenant thought the caregiver was possibly in another room. It

was stormy, windy, raining and the electricity was going on and off, but the tenant could hear the TV and doorbell so there was at least some intermittent power. Eventually someone came to door but the tenant could not see the person. He said name of the other caregiver, and the caregiver said she wasn't there. She said she didn't know who the tenant was. The tenant could hear the landlord's mother, so asked where the other caregiver was and asked her to check the adjoining door to see if it was unlocked. The door opened and the tenant peeked in and stepped in and the caregiver was not known to him. She proceeded to say she wasn't supposed to let anyone in. The tenant told her he lived there and asked her to see if there was a key. She said she wouldn't call the other caregiver. She pointed to the adjoining door; the tenant checked it and it was locked. Then they had a conversation about getting a key.

The tenant also testified that he didn't think to call the landlords. The landlords do not live in the same community.

Analysis

Where a notice to end a tenancy is disputed by a tenant, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it.

The *Act* requires that a notice to end a tenancy given to a tenant must be in the approved form. In this case, no one has provided me with a copy of the notice, and therefore I cannot be satisfied that it is in the approved form.

I accept that the notice was served on the tenant on September 1, 2015; he didn't dispute the landlord's testimony that he acknowledged that in an email.

With respect to the reason for issuing the notice, the *Act* specifies in what cases a landlord can issue such a notice, and the landlords have selected one of those reasons, according to the testimony. However, where a landlord gives several months of time to move out in a notice to end the tenancy for cause, I cannot conclude that the interference or disturbance was sufficient enough to warrant ending the tenancy.

I hereby cancel the notice to end the tenancy, and the tenancy continues.

Since the tenants have been successful with the application, the tenants are also entitled to recover the filing fee. I hereby order the tenants to reduce rent by \$50.00 for a future month as recovery.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated August 31, 2015 is hereby cancelled and the tenancy continues.

I hereby order the tenant to reduce rent for a future month by \$50.00 as recovery of the filing fee.

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: October 08, 2015

Residential Tenancy Branch

