



Dispute Resolution Services

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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 the 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 all parties gave affirmed testimony. The parties were given the opportunity to question each other with respect to 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 given to the tenants was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on January 1, 2010 and the tenants still live in the rental unit. Rent in the amount of \$2,450.00 per month is currently payable 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 but does not recall the amount, but testified that it is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a whole house. A copy of the tenancy agreement has not been provided.

A copy of a 1 Month Notice to End Tenancy for Cause has been provided which is dated August 31, 2015 and contains an effective date of vacancy of September 30,

2015. The landlord testified that he personally served one of the tenants with the notice within a few days of signing it. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant as:
 - 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.

The landlord testified that a crew from a company attended the rental unit to do sewer drain work to make the house safe from flooding. The work was impeded by the tenants, and the company told the landlord that one of the crew members was pushed to the ground by the tenant and police were called. The company asked the landlord to get a signature from the tenants on an agreement that the tenants wouldn't interfere before they would re-attend. The landlord prepared something and gave it to the tenants on or about August 24, 2015, but the tenant refused. A copy has not been provided, however the landlord, during cross examination, stated that perhaps the landlord called the tenant about it and didn't put it in writing for the tenant to sign..

Also, the tenants refused to move their van and no work can be done until it is moved. It has cost the landlord close to \$30,000.00 to get the work done, and the landlord just wants to get the property fixed.

During a severe storm the landlord only found one company that could get equipment to the property to remove a tree, and the tenants were put in a hotel room.

The first tenant testified that the property was not in serious risk. The storm happened on November 14, 2014 and the tenants put themselves up in a hotel. Water was backing up and 2 trees uprooted and the gas line was exposed. The tenants called the police, fire department and the gas company. There was significant ground water and inadequate drainage. The tenant's husband had been calling the landlord about it for years, who never dealt with it until the big storm. It was not until June that the landlord's contractor started, and in the meantime, the tenants saved the property, not putting it at risk. The tenant called the landlord who didn't show up and then called a company who put a pump in which was paid for by the tenants to ensure it wouldn't flood. The tenants also evacuated children next door and an elderly lady across the street.

The tenant further testified that the allegation of pushing someone to the ground is not true, it never happened. On July 31 the tenants were away, and the tenant's husband called the landlord to ask that a specific company not attend because they didn't keep

the gate closed and fences were not replaced and there is a bear in the area. There were periods of 3 weeks when the company didn't show up and showed up whenever they wanted. The tenant is a nurse on-call 24 hours per day on a pager system, doing flight work, and sometimes works all night. Not knowing when the company was going to show up, the tenants never knew when they would have to move vehicles.

The tenant got a call from a neighbour saying a tow truck was towing the tenants' van and the tenants had already talked to the landlord about it. The tenants' adult son was asked by the tenants to attend to the property, ask the contractors to leave and to put the tenants' 2 vehicles, including the one that was towed back into the yard and secure the gate and fence.

The tenants told the landlord that they had no problem moving vehicles, but also told the landlord that they need written notice when contractors were coming. Thereafter, the landlord gave the tenants notices to enter for 7:30 a.m. on August 24, 25 and 26, but the tenants told the landlord it could not be earlier than 8:00 a.m. Then the company attended on 7:00 a.m. or thereabouts, and the tenant's husband spoke to one of the crew members telling him that they couldn't start until 8:00 a.m. For 2 days they didn't show up and the tenants had moved their vehicles. Then they showed up and the tenants got another notice to enter on August 31 for work to commence on September 2, 3 and 4, but no one showed up on any of those dates.

The tenant's husband called the police due to a verbal confrontation on August 25; the tenant's husband was assaulted by the owner of the landlord's contractor. No one was pushed to the ground. There were 2 separate incidents on August 25 and 26, and video evidence has been provided. The tenant was asleep during the August 25 incident, but was present for the August 26 incident, and spoke to the police on both dates. The tenant's husband took a few days off work due to bruising on his arm, and police told the tenants that they could press charges.

The notice to end the tenancy should be cancelled; the tenants did not put the property at significant risk, they prevented it.

The second tenant testified that he had called the landlord over the years about flooding in the back yard and the landlord did nothing about it, and now claims it was an emergency. On November 3, water approached the sliding glass door and the tenant called the landlord, who asked if the tenants knew anyone to call to deal with it. The tenants spent hours looking for someone, but there was severe flooding in the neighbourhood and everyone was busy. Around midnight a company arrived and as the contractor was leaving, 2 trees came down, one across the street and another on a neighbour's roof. The contractor took off because it was a mess. The pump was in

place but the gas line was broken. The tenants evacuated, called 911 and emergency crews showed up. The landlord was notified but again he didn't attend. Around 4:00 a.m. crews had turned off the gas and once the air cleared the tenants were able to go back in. At 5:00 a.m. more crews came to cut the trees off the road. While the tenants were sleeping, the landlord's contractor knocked on the door. They removed stumps and such debris, and installed a sump pump and the landlord said they'd be back in the spring to do the drainage. The sump pump was in place from November 3, 2014 to June 11, 2015 pumping rain water in the back yard. There was no flooding and the sump pump was doing its job.

The landlord advised that his contractor would be arriving on April 6, 2015. The tenant has 22 blueberry bushes in pots that weigh about 50 pounds each, which the tenants were instructed by the landlord to move, and he did. No one showed up. The tenant called the landlord, and when the contractor showed up he said he had no contract with the landlord and didn't have the go-ahead to do the work, contrary to what the landlord had told the tenants.

On June 11, 2015 the work finally started; the patio was torn up and contractors made a pile in front. They had to dig foundation holes for the deck, however they didn't complete the drainage to the street and left it for 3 weeks. The landlord's contractor put the property at risk and at that time the sump pump was working.

The tenant called the landlord before they went away and told the landlord that the landlord's contractors were not securing the property and the landlord said not to worry about it. No notice was given that they were attending, and on August 25, the landlord had the tenants' vehicle towed. The tenants' son got them to leave and the tenants returned home. The contractor had a camera, and being curious, the tenant went into the back yard. The contractor slammed the gate and told the tenant he had no right to be there. The tenant was assaulted by the contractor when the tenant opened the gate.

The following day crews showed up at 7:30 a.m. even after the tenants had informed the landlord that they could not attend until 8:00. He testified that the video evidence shows the tenant calmly telling the contractor he couldn't start till 8:00 a.m. The contractor argued that he was to start at 7:00 a.m., but finally turned the digger off and left calmly.

When the landlord served the tenants with the notice to end the tenancy, the landlord made it clear that he wanted the tenants out so he could raise the rent to recoup his losses from repairs made to the property. There has never been a risk of flooding and the tenants only asked the landlord and his contractors to follow the rules, but the refused by starting work early.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, 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. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

Both tenants testified that they had told the landlord for years that water was pooling in the back yard, and the landlord didn't dispute that. I find it seriously difficult to believe that the tenants refused to remove their van for contractors. They both testified that they cooperated on several occasions and no one showed up. I also question why the landlord would find it acceptable to have the tenants' van towed without having given the tenants any notice that contractors would be attending the property while the tenants were away.

The tenants told the landlord and the contractor that work could not be commenced before 8:00 a.m., and the *Act* specifies as follows, which includes the landlord's contractors:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The landlord has an obligation to instruct contractors accordingly, and because this issue has been outstanding for years, I do not consider it to be an emergency to protect life or property.

In the circumstances, I am not satisfied that the tenants interfered with or disturbed anyone, or jeopardized the health or safety or lawful right of anyone, or that the tenants have put the landlord's property at risk.

The notice to end the tenancy is hereby 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 order that the tenants reduce rent for a future month by that amount or may otherwise recover it from the landlord.

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 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. This amount may be deducted from future rent payable or may otherwise be recovered.

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: November 10, 2015

Residential Tenancy Branch

