



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants application for an Order to cancel a One Month Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant LW, the landlord and a co-owner of the property attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the tenant advised that they have vacated the rental unit on November 27, 2015 and therefore withdraw their application to cancel the Notice to End Tenancy.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on March 01, 2013 for a fixed term of one year. Although the tenancy agreement stipulated that the tenancy must end after the first year the parties continued the tenancy on a month to month basis. Rent for this unit was increased to \$1,537.00 on July 01, 2015.

The tenant testified that they seek compensation because the landlord evicted them for running a daycare business from the rental unit. The tenant agreed that they did not gain the landlord's permission to operate a business from the rental unit but claim that there was nothing in writing stating they could not operate a business from the rental unit. The tenant testified that she understands that the issues were with the landlord's home insurance as his insurance would not cover the property while the tenant ran a daycare business.

On August 21, 2015 the landlord wrote to the tenants and told them they must not operate a daycare as their insurance would not cover the property. The tenants then tried to resolve the issues by obtaining extra liability insurance themselves with their renters insurance to attempt to cover the property. This was confirmed to the landlord on September 11, 2015. On September 30, 2015 the tenants received another notice stating that the landlord's insurers had allowed him another 30 days, the tenants assumed from this that they then had another 30 days to either stop the daycare or find a resolution.

On September 24, 2015 the tenants received an email from the landlord requiring a response about the daycare and on September 27, 2015 the tenants received a One

Month Notice to End Tenancy for Cause. This Notice cited two reasons to end the tenancy as follows:

The tenant or a person permitted on the property by the tenant as

- 1) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- 2) Put the landlord's property at significant risk.

The Notice has an effective date of October 30, 2015.

The tenant testified that they had applied to dispute the Notice but decided to move from the rental unit instead. The tenant testified that the landlord's evidence suggests that the tenants planned to operate the daycare business when they moved in; however, this was not the case it came about after they had moved in. The tenant testified that they lost money when they had to stop the daycare and seek to recover \$1,100.00 in lost income. The tenants also incurred costs to move out, this includes costs for the rental of a moving truck and a dolly and pads for two days; for a man to help them move over 18 hours and for mileage for the moving truck and fuel costs. The tenants have provided the invoice for the truck and the dolly and pads to a total of \$29.00 for each of the two days and \$20.00 for the rental of the dolly and pads and a hand written note from the person helping them move showing his costs of \$108.00. No further invoices have been provided in documentary evidence.

The landlord testified that they initially thought the tenant was simply babysitting at the rental unit as they had seen mothers and children coming to the unit. Last spring; however, a neighbour mentioned to the landlord that the tenants were operating a daycare business. In June, 2015 the landlords had an insurance claim at the property and they saw several children there. This alarmed the landlord and they consulted with their insurance provider. Their insurance provider informed the landlords that they were not covered for any business to be conducted from the property. If the landlords insurance was declined because of the tenants' daycare business this could affect their mortgage as they must have insurance for their mortgage company.

The landlord testified that the tenants were notified and were given notice to cease the operation of this business. Over the next few weeks the tenants and landlords went backwards and forwards. The tenants did inform the landlord that they had insurance that would offer the landlord protection. The landlord showed this to his insurance provider and was told the tenants' insurance would not cover the landlord's property. The landlord continued to investigate other options and there was only one other provider that agreed to cover the landlord's property; however, the terms were unacceptable to the landlord as it would have doubled their premium. The landlord contacted another company that the tenants recommended and again their quote would have doubled the landlord's premium.

The landlord testified that throughout this process they felt they had given the tenants ample notice and eventually served the tenants with the One Month Notice to End Tenancy. The tenants choose to vacate the rental unit rather than wait for the hearing and the landlord disputed the tenants' claim for compensation for moving costs or loss of income.

Analysis

I have carefully considered the evidence before me, including the sworn testimony of both parties. With regard to the tenants' claim for compensation for moving costs and the loss of income from the daycare business; the landlord had served the tenants with a One Month Notice to End Tenancy for cause due to the operation of a daycare at the rental unit without the landlord's written permission. The tenants had filed to dispute the Notice but then made the choice to vacate the rental unit prior to the scheduled hearing.

As it was the tenants' choice to vacate the unit, then it is irrespective of the reasons given on the One Month Notice and there is no provision under the *Act* for compensation to be awarded to the tenants for moving costs or loss of income because of the One Month Notice. Had the tenants continued with the tenancy until the scheduled hearing today then the matter of the daycare could have been brought

forward and a determination made on the reasons given on the One Month Notice to End Tenancy. If the tenants had then been successful with their application the tenancy could have continued and there would be no costs incurred for moving and the matter of the daycare would have been decided upon. If the tenants were unsuccessful the tenancy would have ended and no compensation would be awarded to the tenants if the landlord had a valid reason to end the tenancy.

Due to the above I find no compensation may be awarded to the tenants for their moving costs or any loss of income from their business. The tenants' application for a Monetary Order is therefore dismissed.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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: December 11, 2015

Residential Tenancy Branch

