



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SWAN LAKE NATURE SANCTUARY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNL FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on November 9, 2015. The Tenants filed seeking an order to cancel a 2 Month Notice to end tenancy for landlord's use and to recover the cost of their filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by three agents for the Landlord, the Landlord's Witness, and both Tenants. Only one agent, D.B., and the Landlord's witness submitted evidence on behalf of the Landlord. Although present, the other agents did not submit testimony.

Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On December 17, 2015 the Tenants submitted 11 pages of evidence to the Residential Tenancy Branch (RTB). On December 21, 2015 a second package of evidence was received from the Tenants at the RTB. The Tenants affirmed that they served the Landlord with copies of the same documents that they had served the RTB. The Landlord acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenant's submission as evidence for these proceedings.

On January 5, 2016 the Landlord submitted 33 pages of evidence to the RTB. The Landlord affirmed that they served the Tenants with copies of the same documents that they had served the RTB. The Tenants acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's submission as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants vacated the property?
2. If so, what was the end date of this tenancy?

Background and Evidence

The Tenants have occupied this property since June 2000 entering into subsequent fixed term tenancy agreements. The latest tenancy agreement was effective January 1, 2015 and was set to expire in one year on December 31, 2015. Rent of \$797.00 was payable on the first of each month. No security or pet deposits were required to be paid.

October 26, 2015 the Tenants were served a letter from the Landlord indicating that their tenancy would not be renewed after it expired on December 31, 2015. The Tenants were also served a 2 Month Notice to end tenancy for landlord's use on October 26, 2015, listing an effective date of January 31, 2015.

The Tenants testified and denied that they had vacated the property. Upon further clarification they stated that they moved most of their belongings out of the rental unit at the end of December 2015. They then stated that they were not currently residing in the rental unit and had not returned to the unit since the end of December.

The Landlord testified that the Tenants had vacated the property by December 31, 2015. He pointed to their evidence which included a letter from their staff member (the Witness) who submitted that the male Tenant approached her on December 31, 2015 at approximately 8:20 a.m. and told her that it was their last day at the property. Based on that conversation the Landlord stated that they treated the tenancy as being over.

The Landlord stated that the Tenants had nailed the door shut and changed the locks before leaving. They left only 1 jacket, 2 jars of BBQ sauce and 1 cat carrier in the rental unit. The Tenants pulled out the kitchen cabinet boards, removed the wood stove pipe, removed the mailbox and tore down the fence.

The Tenants disputed that they had removed the cabinet boards or the wood stove pipe. They acknowledged that they had put a screw in the door and alleged that they needed to screw the door shut to make it safe. They asserted that they had intended on being completely moved out by January 31, 2016.

The Tenants argued that they had left more possessions in the rental unit than stated by the Landlord including a wood stove. They said they had made numerous improvements to the property over the period of their tenancy and those improvement items were their property, including the wood stove.

I attempted to arrange a date and time for the Tenants to meet with the Landlords so they could retrieve the rest of their possessions; however, it was at this point the male Tenant became increasingly upset. He made it very clear that he had no intention of returning to the property and he wanted no further communication with the Landlord's agents.

The male Tenant, M.C., became very upset and continued to attack the veracity of the Landlord while interrupting while I spoke. He then directed his anger towards me stating that I was as bad as the Landlord if I believed their stories. At this point I informed the Tenant that his comments were inappropriate and would not be tolerated further. The male Tenant removed himself from the hearing at that point. The hearing continued in the presence of the female Tenant and the Landlord.

The female Tenant submitted that she was intending on returning to the property to retrieve the rest of her possessions and indicated that she did not want any of the Landlord's agents to be at the unit while she was there. Upon further clarification she stated she had sold some items that were still at the rental unit in the yard. She said she had arranged to have people come and pick up those items and those purchasers would not want the Landlord around when they attended the rental property.

The Tenant agreed to meet the Landlord(s) at the property on January 30, 2016 at 12:00 p.m. The Tenant was very evasive when I attempted to clarify if she would be leaving town on January 30th or if she would remain until January 31, 2016. She denied speaking with the Witness and when I asked if her husband had spoken to her the Tenant stated that she did not know. I asked to speak to the male Tenant and the female Tenant stated that he had left.

I then called the Witness to testify. She provided affirmed testimony that the male Tenant had approached her at the end of December 2015 and told her that it was their final day there and they were leaving. The female Tenant was given the opportunity to question the Witness; however, she declined.

The Landlord submitted that the property was about to be torn down so if the Tenants wanted to remove one of the wood stoves that would be okay with them. He stated that given the manner in which things have developed and the condition in which the property had been left, they did not want the Tenants to be at the property unsupervised.

Prior to concluding the hearing I issued the following oral order:

The Landlord is ordered to allow the Tenant(s) supervised access to the rental unit and property on January 30, 2016 at 12 noon to allow the Tenant(s) to remove their remaining possessions.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The Tenants confirmed that they removed most of their possessions at the end of December 2015 and will no longer be residing in the rental unit. They submitted that they intended to be fully moved out by January 31, 2016 in accordance with the first Notice to end tenancy. Therefore, I find the Tenant's application to cancel the 2 Month Notice to be meritless. Accordingly, I dismiss their application in its entirety.

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit.

Notwithstanding the Tenants' submission that the first Notice to end tenancy listed an effective date of January 31, 2016, I accept the Witness's undisputed testimony that at the end of December 2015 the male Tenant told her it was their last day at the property.

It was undeniable that the relationship between the Tenants and the Landlord's Agents became adversarial and has continued to escalate. When considering the circumstances described to me during the hearing; the Witness's testimony; the list of items left in the rental unit; and the Tenants' evasive submissions; I find it was reasonable for the Landlord to conclude that the

Tenants had fully vacated the rental unit at the end of December 2015. Accordingly, I conclude this tenancy ended December 31, 2015, pursuant to section 44(1)(d) of the *Act*. In addition, I accepted the Tenants' submissions that they had left possessions at the rental unit which they wished to retrieve.

I favored the Landlord's submission that the relationship had escalated to the point that they did not feel comfortable allowing the Tenants unsupervised access to the rental unit on January 30, 2016. I favored the Landlord's submission in part, based on the Tenants' behavior during the hearing. As such I granted the Tenant's supervised access to the rental unit on January 30, 2016 beginning at 12:00 p.m.

After consideration of the my oral order, I now order the Landlord to allow the Tenants and/or their agents access to the rental unit and property between 12:00 p.m. and 4:30 p.m. on January 30, 2016 so that the Tenants and/or their agents may remove the Tenants' personal possessions.

Conclusion

The Tenant's application was dismissed in its entirety and the Landlord was ordered to allow the Tenants and/or their agents, access to the rental unit and property on January 30, 2016 between 12:00 p.m. and 4:30 p.m.

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: January 12, 2016

Residential Tenancy Branch

