



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for more time than prescribed to dispute a notice to end a tenancy, for an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlords for the cost of the application.

Both landlords and both tenants attended the hearing and each gave affirmed testimony. The landlords were also assisted by an agent, who also gave affirmed testimony. The parties were given the opportunity to question each other and the landlords' agent with respect to the testimony and evidence provided, 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. However, the landlords advised that some evidentiary material, including photographs have been provided for this hearing. That documentation had not been received by me prior to the hearing. I advised the parties that I would not be making my Decision until such time that the evidence has been reviewed. I have now received that evidentiary material which is stamped by the Residential Tenancy Branch as received on February 9, 2016. I find that the evidence has been provided in accordance with the Rules of Procedure, and all evidence has been reviewed.

Issue(s) to be Decided

- Should the tenants be granted more time than prescribed to dispute a notice to end a tenancy given by the landlords?
- Have the landlords established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The first landlord (DRF) testified that this month-to-month tenancy began about 2 years ago and the tenants still reside in the rental unit. Rent in the amount of \$800.00 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 landlords collected a security deposit from the tenants in the amount of \$200.00 which is still held in trust by the landlords, and no pet damage deposit was collected. No tenancy agreement was signed by the parties. The rental unit is a single family dwelling on property containing 7 houses, and all are tenanted. The landlords do not live on the rental property.

The landlord further testified that on December 31, 2015 the landlord personally handed to the female tenant a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. The notice is dated December 31, 2015 and contains an effective date of vacancy of May 31, 2016. The landlords believed that since it was winter, the tenants should be given extra time to move out. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has engaged in illegal activity that has or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Although no one saw it, the landlord believes the tenant kicked in the door to the landlord's shop on the property. A neighbouring tenant told the landlords that the tenant told the neighbouring tenant that he was going to kick in the door. The landlords had allowed the tenants to use the shop, but the landlords had the lock changed on November 25, 2015 to disallow entry to the tenant. The landlords store a bobcat in there and the landlords did not trust the tenant. There was no damage to the door prior, and police were called once the damage was noticed. The landlords did not want to press charges.

The second landlord (LLF) testified that the tenant did some work for the landlords. Also, the tenant took the gate off the chicken coop and refused to put it back.

The landlords' witness testified that he is the landlords' maintenance man, and once the landlords noticed the damage to the shop door, the witness was called, and arrived around the same time as the police. The tenant said the door had been broken since he moved in, however if it had been, the witness would have fixed it. The witness

changed the lock on the shop in November, 2015 and there was no damage there at the time. The tenants had been given access to the shop previously because the tenants paid the electricity bill and the shop used some of that, so in exchange, the tenants were permitted to use the shop.

The landlords' witness also testified that a neighbouring tenant advised the witness that the tenant was angry because the landlord took away access to the shop and that the tenant was going to kick in the door.

The first tenant (QRC) testified that the landlord asked the tenant for keys to the shop but the tenant refused. The tenant did not kick in the shop door and wasn't even home at the time. The tenant told the police officer that and told the officer that he didn't know anything about it.

The tenants have also filed another application for dispute resolution and the tenant is somewhat confused about the 2 files, when they were filed or what the applications are for. The other one was filed on January 7, 2016, and by filing a copy of the notice to end the tenancy in that file, the tenants believed they had filed within time.

The second tenant (JAVH) testified that the other tenant was working with the tenant's father helping to thaw pipes. The tenant would drive the other tenant on her way to work and pick him up after her shift, which started on November 24, 2015.

Analysis

Firstly, with respect to the tenants' application seeking more time to dispute a notice to end a tenancy, the landlord testified that it was served on December 31, 2015 personally to one of the tenants. The tenants filed the application for dispute resolution on January 20, 2016. The *Act* requires a tenant to dispute such a notice within 10 days of receipt. The parties have another hearing coming up, and the tenant testified that there is some confusion about what has been filed and when the applications were filed. I find that it is entirely possible that the tenants believed they had applied within the time required due to another application filed by the tenants on January 7, 2016. Therefore, I grant more time to the tenants to dispute the notice to end the tenancy.

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*, 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.

The landlords rely on information given by another tenant that the tenant threatened to kick in the shop door because the landlords denied access. The tenant disputes that, and one of the landlords testified that no one saw it. There was no other reason for issuing the notice that the landlords described, and I am not satisfied that the landlords have established that the tenants caused the damage.

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 \$100.00 filing fee. I order the tenants to reduce rent for a future month 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 December 31, 2015 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlords in the amount of \$100.00 as recovery of the filing fee, and I order the tenants to reduce rent for a future month by that amount or may otherwise recover it.

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: February 16, 2016

Residential Tenancy Branch

