



Dispute Resolution Services

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 seeking 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.

The landlord and both tenants attended the hearing and provided evidentiary material in advance of the hearing. The landlord and one of the tenants gave affirmed testimony, and the parties were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this tenancy began on July 15, 2014 on a month-to-month basis for rent in the amount of \$1,500.00 per month. The parties entered into a new tenancy agreement in December, 2014 for a fixed term to begin January 18, 2015 and expiring on January 18, 2016 for rent in the amount of \$1,700.00 per month due on the 17th of each month commencing January 17, 2015. There are no rental arrears. The landlord currently holds a security deposit in the amount of \$850.00 and a pet damage deposit in the amount of \$850.00. The rental unit is a hobby farm.

The landlord further testified that on February 20, 2016 he personally served to one of the named tenants a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. The notice is dated February 20, 2016 and contains an effective date of vacancy of March 31, 2016. The reasons for issuing the notice are:

- Tenant is repeatedly late paying rent;

- Tenant has allowed an unreasonable number of occupants in the unit/site (beside which someone has written “pets, birds”);
- Tenant or a person permitted on the property by the tenant has put the landlord’s property at significant risk;
- Tenant has caused extraordinary damage to the unit/site or property/park (beside which someone has written “lawn + front door paint”).

The landlord further testified that the tenants were 4 days late with rent for August, 2014; 5 days late for October, 2014; 9 days late for July, 2015; and 5 days late for October, 2015.

The landlord also testified that the tenants had upwards of 60 dogs on the rental property as well as birds, rabbits, 5 horses and chickens. When the tenants moved in, they told the landlord they had 13 dogs and had a kennel license, and the tenants would check all the bi-laws to be sure they were following the rules. Later, they told the landlord they had roughly 30 dogs and had checked bi-laws and it was permitted. However, early this year, the landlord checked and discovered the tenants had been breaking the bi-laws all along and the landlord filed a complaint with dog control. The dog control personnel went to the property and told the tenants they were breaking the rules and the tenants promised to remove the dogs and birds off the property.

On February 10, 2016 the landlord attended the rental property and the tenants advised that a faucet upstairs had been leaking for a couple of weeks. The floors downstairs were rotten, walls were wet and the restoration company opened up the walls and found black mold. The tenants knew about the leak in the summer of 2015 and neglected to tell the landlord until February 10, 2016. The landlord now has to disclose that, which could decrease the property value.

The landlord also testified that the tenants have not been taking care of the yard, which will also decrease the property value, and the landlord needs to sell. Photographs of the rental property have been provided.

The tenant testified that the parties had agreed to pay rent by interac transfer, and the landlord didn’t know how to deal with it, so the first one got cancelled and re-done. Another time, the tenants put the money in, but the landlord didn’t accept it until late. The other 2 occasions were due to a family death and another family illness, and on both occasions the tenants advised the landlord they would be late and on both occasions the landlord said to pay it as soon as the tenants were able, which they did.

There are not an unreasonable number of occupants residing in the rental unit, only the 2 named tenants and a daughter of one of the tenants.

The tenants were given permission at the beginning of the tenancy to have the animals. The tenants invited the landlord and his spouse to the property where the tenants previously lived, where the tenants had 20 adult dogs licensed individually, and dogs under 6 months which didn’t need to be licensed. There was no discussion of a kennel license and the landlord agreed to setting up a kennel. The tenant also asked about farm animals.

In late February or early March, 2016 the landlord texted the tenant asking if the tenant had a kennel license and the tenant replied that he didn't need one. There was no discussion about it prior to then. The tenant checked with the Town and was advised that for that size of property 3 dogs were permitted without a kennel license, and there was a new bi-law. The tenant was directed to email to the Town office the number of dogs and their ages, and agreed to work with the tenant and make a plan. The tenant did so, and immediately after sending the email, the dog control person showed up. The landlord had called them, and the tenant received a bi-law infraction. The Town office is still working with the tenants to get it down to 3 dogs, and the tenants send in monthly reports.

The tenant further testified that the landlord's photographs of the yard were taken in February right after the snow disappeared, and noted that one of the trees still has dead leaves on it from the previous year. When the tenants moved in, the landlord had a yard keeper who didn't do a good job and the lawn was brown. The tenants brought it back from dead to a green lawn. The tenants have also provided photographs and the tenant testified that since they were taken, the tenants have also re-seeded and it looks much different now.

With respect to water damage, the tenant testified that when they moved in, the landlord said that often the floor in the basement would flood, and that if it did, to use the sump pump, and showed the tenant how to use it. The landlord's wife had previously had a dog grooming business there, and the other side of the wall was a bedroom. In the spring water leaked in as the landlord advised that it would. In the spring of 2015 it flooded, the tenants pumped it out and weren't concerned. It appeared fine and the tenants didn't notice anything on the walls. At the beginning of the tenancy the landlord told the tenants that only one faucet outside was usable, and when the tenants saw water on the floor in the basement, he told the landlord that they had used the sump pump.

The restoration company viewed the rental unit, checked a piece of the wall and said that the leaking had been happening for a long time. The landlord asked the tenants to lie and say that it had just happened so that the insurance company would cover the damage, but the tenant refused to lie. The landlord's evidence material includes a letter saying the tenants wouldn't allow the repair, but that is not true. The tenants have been more than cooperative and haven't been able to use that room since February, 2016.

There is no excessive damage. The landlord wanted the tenants to move out so he could sell because the realtor told the landlord to get rid of tenants. This is more about selling, and the tenant told the landlord to give proper notice once it has sold. The landlord also threatened more than once to burn the house down. Police also told the landlord he had to give 24 hours notice to attend the rental unit.

The tenant further testified that he went into the attic of the rental unit today, and mold is visible there as well. The tenants are trying to find another place to rent.

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 1 Month Notice to End Tenancy for Cause, 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 landlord testified that the tenants were late with rent on 4 occasions, however the tenant testified that 2 of those occasions had to do with automatic debits which were not accepted by the landlord on time. The landlord did not dispute that testimony. In order to end a tenancy for repeated late rent, the tenants must have paid the rent late on at least 3 occasions, and where they are far apart, the tenant may not be considered to be repeatedly late. In this case, I find that the tenants cannot be considered to be repeatedly late given that evidence, and considering that the first 2 late payments were in 2014.

With respect to the second reason for issuing the notice, "Tenant has allowed an unreasonable number of occupants in the rental unit/site," pets are not considered as occupants with respect to a notice to end a tenancy.

With respect to the next reason for issuing the notice, "Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk," the landlord referred to water damage and testified that as a result of the tenants' failure to inform the landlord, the floors were rotten, walls were wet, and mold was found. The tenant testified that it wasn't visible and the landlord showed the tenants how to use the sump pump when they moved in, and they did so. The tenant also testified that mold is in the attic, which I cannot find is attributed to the landlord's claim of water damage. The tenant also testified that the landlord asked the tenants to lie about it so the insurance policy would cover it, and the restoration person said it had been developing over a long period of time. Therefore, I am not satisfied that the tenants have put the landlord's property at significant risk.

With respect to the final reason for issuing the notice, "Tenant has caused extraordinary damage to the unit/site or property/park," the landlord wrote beside the recital, "Lawn & front door paint." I have reviewed the photographs, and it's clear that not all leaves could be raked up if they didn't fall before the snow fell. The tenant also testified that a previous grounds keeper of the landlord wasn't looking after the lawn, and the tenants brought it back from a dead lawn to a green lawn, and the landlord has not disputed that. The landlord's photographs were taken on February 20, 2016, and I am not satisfied that the landlord has established that the tenants have caused extraordinary damage.

Having heard from the parties, I am satisfied that the landlord intends to sell the rental property, and it will be easier to sell if it is not tenanted and if the landlord can do some work to it. However, that is not the concern of the tenants. In the circumstances, I am not satisfied that the landlord had cause to issue the notice, and I hereby cancel it.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee. I hereby order that the tenants be permitted 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 February 20, 2016 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 \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount as recovery, 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: April 08, 2016

Residential Tenancy Branch