



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and gave affirmed testimony.

The landlord had submitted four pages of written evidence. The tenants said they had not received the evidence. The landlord said that not only had he left the documents in the tenants' mailbox and taken a picture of that, he had given the same documents to the tenants on many prior occasions. I accepted the landlord's testimony and accepted the documents into evidence.

Issue(s) to be Decided

Is the 1 Month Notice to End Tenancy for Cause dated May 29, 2016 valid?

Background and Evidence

This month-to-month tenancy agreement commenced July 1, 2014. The monthly rent of \$700.00, which includes hydro, is due on the first day of the month. The rental unit is the lower level of a house. There is one hydro meter for the house. The hydro bill is split equally between the landlord and the upstairs tenants.

In January the landlord received a letter from the local municipality dated January 23, 2016. The letter stated, in part:

"A recent inspection has revealed that you do not occupy the Property and that a secondary suite exists on the Property.

For your information, Surrey Zoning By-law 1993, No. 12000 states that houses that contain secondary suites must be owner occupied. Therefore, the secondary suite at the Property is an illegal dwelling unit.

The illegal dwelling unit must be removed from the Property, which requires the following alterations:

- All cooking facilities must be removed from the illegal dwelling unit and any openings for those facilities must be wall-boarded over.
- The electrical breaker controlling the range receptacle must be removed and its spot blanked on the electrical panel.
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We will conduct a follow-up inspection on April 4, 2016 at 11:00 AM to determine whether you have removed the illegal dwelling unit. If the illegal dwelling unit is not removed, further legal action will be taken.”

On February 1 the landlord issued and served the tenants with a 1 Month Notice to End Tenancy for Cause. The only reason stated on the Notice was “Rental unit/site must be vacated to comply with government order.”

The tenants disputed the Notice. The hearing of their application was on March 11. The landlord did not file a copy of the letters from the municipality into evidence. The arbitrator held that the landlord had not met his burden of proof and set the Notice aside.

On March 22 the landlord issued and served the tenants with a new 1 Month Notice to End Tenancy for Cause. Once again the only reason on the Notice was “Rental unit/site must be vacated to comply with government order.”

Once again the tenants disputed the Notice. The hearing of their application was on May 11. Once again the landlord failed to file a copy of the correspondence from the municipality into evidence. Once again the Notice to End Tenancy was set aside because the landlord had not met his burden of proof.

On May 29 the landlord issued and served a new 1 Month Notice to End Tenancy for Cause. This time the sole reason on the Notice was that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and/or seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The need to comply with a government order was not given as a reason for ending the tenancy.

The tenants disputed the Notice and that is the issue in this hearing.

This time the landlord filed copies of the correspondence from the municipality as evidence. This is the only written evidence he submitted.

The landlord testified that the inspection referred to in the January 23 letter has been postponed several times pending the outcome of the various dispute resolution hearings.

As far as the grounds stated on this notice to end tenancy, the landlord testified that two sets of upstairs tenants have moved out between January and June because of noise and constant traffic to and from the downstairs unit, as well as allegations that the tenants were using too much hydro. The tenants testified that they have maintained friendly relations with all the upstairs tenants, including the bikers; it was the upstairs tenants who had extra residents and lots of company; and that various upstairs tenants have told them they moved out because of concerns over the cost of hydro and arguments with the landlord about the hydro bill. No witnesses other than the landlord and the tenants provided any evidence.

Analysis

As explained in all the previous decisions it is up to the landlord to prove the validity of the Notice to End Tenancy, on a balance of probabilities.

This time the landlord did file evidence that supported his contention that the unit had to be vacated to comply with a government order. However, that is not the reason stated on the May 29th Notice to End Tenancy so that evidence, which is critical when the reason on the Notice is compliance on a government order, has nothing to do with this application.

The only evidence regarding the allegations set out on this Notice to End Tenancy is the conflicting oral statements of the parties. There is nothing to tip the balance of probabilities in the landlord's favour. Accordingly, the tenants' application must be granted and the 1 Month Notice to End Tenancy for Cause dated May 28, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, the tenants' application is granted and the 1 Month Notice to End Tenancy for Cause dated May 28, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

The tenants did not pay a fee to file this application so no further order is required.

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: July 21, 2016

Residential Tenancy Branch