



Dispute Resolution Services

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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 tenant for 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 tenant and the landlord attended the hearing, and the landlord was represented by an agent, and the tenant was assisted by a Legal Advocate. The tenant and the landlord's agent each gave affirmed testimony, and the parties were given the opportunity to question each other and give submissions.

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

Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that he is the son of the landlord and has personal knowledge of issues related to the tenancy. This month-to-month tenancy began in June, 2006 and the tenant still resides in the rental unit. Rent in the amount of \$720.00 per month is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 2 basement suites in a home that is also occupied by the landlord, and the second basement suite is also tenanted. The landlord's agent does not reside on the rental property. A tenancy agreement was signed by the parties but a copy has not been provided for this hearing.

The landlord's agent further testified that on August 14, 2016 the tenant was personally served with a 1 Month Notice to End Tenancy for Cause, and the landlord's agent was present at the time. A copy of the notice has been provided and it is dated September 14, 2016 and contains an effective date of vacancy of September 15, 2016. The landlord's agent testified that the date it was issued is incorrect and ought to have read that it was issued on August 14, 2016, and the landlord believed that 30 days notice was required regardless of when rent is payable. The reason for issuing the notice states: "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord." In the details section of the 2-page form it states: "see attached," and the tenant has provided a copy of the notice with the attached sheet listing a number of issues.

The landlord and tenant had a very amicable relationship for the first 8 years or so of the tenancy, but things have deteriorated over the last year. The last issue was the tenant yelling at the landlord and his aggressiveness toward the landlord. A number of incidents have occurred and the landlord's agent told the landlord that it was time that the parties part ways. Neighbours have complained. It is totally false that the landlord wants the tenant to move out so that rent could be raised for a new tenant, and the landlord has only raised rent once during this tenancy. Once the tenant has moved out, the landlord will not re-rent, but will leave the rental unit vacant.

In November, 2015 a security fellow was at the rental home and used the tenant's parking spot. The tenant hit the person's vehicle while he was in his car, backed up and hit it again. The tenant was aggressive and told the security person to move his car.

The tenant has also accused the landlord of accosting him, but the tenant has yelled and swore at the landlord causing the landlord to run into his house. The landlord should not be afraid in his own home. Both the landlord and the tenant are seniors, and the landlord's agent denies that the landlord has ever accosted the tenant. The tenant's evidentiary material includes hand-writing on the Details document attached to the notice to end the tenancy, and the landlord's agent testified that the accusations made therein are false, however the landlord's agent has never personally witnessed the tenant being aggressive and has no concerns personally about the tenant's behaviour.

The tenant testified that he is not a violent person and is 80 years old. In early May, 2014 the landlord accosted the tenant for no reason and instead of calling police, the tenant called the landlord's son to assist.

The tenant also testified that ICBC called the tenant stating there was no claim for the vehicle that the landlord's agent testified was rammed by the tenant.

Gates are never closed or locked at the rental home, and the tenant was upset at thefts on the property twice and the landlord's response was that it's not his fault and has no concerns about the tenant's losses.

There is no reason for the landlord to be frightful; the tenant ought to be frightful due to the landlord's actions. The tenant denies ever disturbing anyone in the rental home in any way.

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*, with the exception of the dates. However, the reason for issuing it is in dispute.

The *Act* also specifies in what circumstances a landlord may issue a 1 Month Notice to End Tenancy for Cause, one of which is that the tenant has interfered with or unreasonably disturbed another occupant or the landlord. The only testimony I have about unreasonable disturbances to other occupants or the landlord is the testimony of the landlord's agent that there have been incidents over the last 8 months. He also testified that neighbours have complained but didn't specify who they complained about or to whom, or what those complaints may have been. He also testified that the tenant rammed another vehicle twice, which is disputed by the tenant.

The parties agree that the tenant was upset about losses suffered due to thefts. The landlord has provided details of the cause in a separate sheet attached to the 1 Month Notice to End Tenancy for Cause, and the tenant has hand-written responses onto that document for this hearing. I have read both the details and the responses by the tenant.

I also consider the testimony of the landlord's agent that it's time for the parties to part ways, however that is not contemplated by the *Residential Tenancy Act*. I am not satisfied that the landlord wants the tenant to move out so he can raise the rent for another tenant, but I am also not satisfied that the landlord has established that the tenant has unreasonably disturbed another occupant or the landlord. The parties have a contract, and being friends is not a part of that contract. The parties have a landlord-tenant relationship. I find that the landlord wishes to end the tenancy for reasons other than contemplated by the *Act*. The landlord's agent testified that he has not witnessed any of the allegations made by the landlord, and where allegations of disturbances or

interference made by a landlord are disputed by a tenant, the reasons have not been proven by hear-say testimony of the landlord's agent.

In the circumstances, I am not satisfied that the landlord has established that notice to end the tenancy should be upheld, and I hereby cancel it.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenant for that amount and I order that the tenant 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 September 14, 2016 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Sections 67 and 72 of the *Residential Tenancy Act*, and I order that the tenant may 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: October 07, 2016

Residential Tenancy Branch

