



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated December 21, 2016.

Both tenants attended the hearing. As the landlord did not attend the hearing, service of the Notice of Hearing was considered. The tenants testified the Application for Dispute Resolution, the Notice of Hearing, and associated evidence, were sent by registered mail to the landlord’s mailing address, which is also the suite directly above the tenants’ rental unit, on or about January 6, 2017. They further testified that they emailed the landlord with the same materials on or about January 13, 2017, after they were granted an order allowing them to serve the landlord by email. The file number for the order for substituted service is reproduced on the cover page of this decision.

Based on the tenants’ affirmed testimony and the emails in evidence documenting their attempts to communicate with their landlord, referenced below, I accept that the landlord was sufficiently served twice, pursuant to sections 89 and 90 of the Act. More specifically, I accept that service by registered mail was acceptable and deemed effective on January 11, 2017, five days after service. I also accept that the landlord was served by email pursuant to s. 89(1)(e) as a result of the order for substituted service. Based on the above, and pursuant to section 71 of the Act, I find that the landlord has been sufficiently served with the Notice of Hearing, Application, and supporting evidence.

The tenants gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Issues to be Decided

Should the 1 Month Notice be cancelled?

Should the landlord be ordered to comply with the Act, regulation, and/or tenancy agreement?

Should the tenants receive their application filing fee back?

Background and Evidence

The tenancy agreement was not in evidence. The tenants testified that the tenancy began on July 15, 2015 as a one year fixed term and has since become month to month. Rent in the amount of \$1,800.00 is payable on the first of each month. The tenants paid a security deposit of \$900.00.

They testified that they had initially provided the landlord with a series of post-dated cheques for the rent and that after 6 months or a year they began providing monthly rent cheques. These were left in the landlord's mailbox. The tenants further testified that they left their December rent cheque in the landlord's mailbox on December 1, 2016, as they usually did, but that unbeknownst to them, the landlord was out of town.

The tenants further stated that on December 15, 2016, they received an email from the landlord asking them to provide their December payment to another person. A copy of the email was submitted in evidence. In it the landlord also stated (reproduced as written):

I would like to give you a one notice of eviction. You would have to pay January's rent. I'm not around to give you back the damage deposit, therefore, you could live till mid February/2016. You would have to give me the exact date of your leaving so I could inspect the suite. Thank you, have a merry Christmas.

The tenants responded on December 17, 2016, advising that they had left the rent in the mailbox at the beginning of the month as usual. They also sought clarification on the landlord's attempt to evict them and directed her to the Residential Tenancy Branch's website.

On December 19, 2016, the landlord replied that she had been having her son and a friend check the mail box and they had not received the cheque. She stated that she had given the tenants her banking account information and still had not received the rental monies. On that same day the landlord sent the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 19 by email. A copy of the 10 Day Notice was in evidence. It indicates, incorrectly, that the tenants were served on December 29, 2016.

Also on December 19, 2016, the tenants sent the landlord an electronic transfer of funds for the December rent and advised the landlord that they had done so via email. The landlord's response, still on December 19, was as follows (reproduced as written): "I have served you an eviction notice. You couldn't live till the end of the month free. Have a nice evening."

The tenants emailed the landlord the following day and advised that they understood that because they had transferred the money within the five days allowed under a 10 Day Notice, the 10 Day Notice would be cancelled. They asked the landlord to contact them by phone or Skype or Facetime, stating: "We want to work this out without making it difficult for everyone."

The landlord's email response, also sent December 20, was as follows (reproduced as written): "I don't have access to the phone. I asked my son and friend about the rental money. the check was never forthcoming. The eviction notice is valid."

By way of another email sent the same day the landlord advised the tenants that her friend would be contacting them to collect the keys. Also on December 20, 2016, the tenants emailed to confirm that the landlord had received their etransfer. The landlord's response was: "I did not transfer the funds. You could live up to the Dec. 28 for free. That would include your damage deposit."

On December 21, the tenants went to the bank and transferred the December rent money into the landlord's bank account. A copy of the banking receipt and their email to the landlord advising of the transfer were in evidence. The tenants' email also included the following:

We will remain in the apartment and continue to pay rent on the 1st of the month until a further notice is provided with a suitable reason for ending our tenancy. We have always had a good relationship with you and would like to mutually come to an agreement on a fair date to move out. We suggest

that you contact the BC Residential Tenancy Board or read the information on their website in full to understand our rights as tenants.

The landlord sent the tenants the 1 Month Notice under consideration here on December 21, 2016 by email. The landlord has checked the section indicating “the tenant is repeatedly late paying rent” as the reason for the 1 Month Notice. However, she has struck out the word “repeatedly.”

All of the emails referenced above were in evidence.

Analysis

The landlord has the burden of proving that there is cause sufficient to terminate the tenancy for the reason given on the 1 Month Notice. The landlord has not attended and has not alleged repeated late payment of rent in any event. Accordingly, the landlord has failed to meet her evidentiary burden; she has not substantiated that there is cause to end the tenancy under the 1 Month Notice.

As a result, I grant the tenants’ application to cancel the 1 Month Notice. The 1 Month Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

As the landlord did not attend the hearing, the tenants’ evidence was undisputed. Based on their testimony and the email correspondence in evidence, I find that the landlord has attempted to end their tenancy in a way that is not authorized by the Act. I also find that she has improperly refused to accept the payment of rent from the tenants by not cashing the cheque left in her mail box on December 1, 2016 and by refusing to deposit their email transfer.

The landlord clearly wishes to end the tenancy. It may be that she wishes to avoid operation of s. 51 of the Act, which requires that a landlord compensate a tenant in the amount of one month’s rent where a tenancy is ended for landlord’s use of the property. However, the landlord is cautioned that she may only end the tenancy in accordance with the Act, or she may face a monetary claim from the tenants or an administrative penalty of up to \$5,000.00 per day for breaching the Act.

As the tenants were successful with their application, they are entitled to recover the filing fee from the landlord. I authorize the tenants to deduct \$100.00 from a future month rent payable to the landlord to satisfy this award pursuant to s. 72(2)(a).

Conclusion

The tenants' application to cancel the 1 Month Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

I order the landlord to comply with the Act, and to cease attempting to end this tenancy in ways that are not authorized by the Act. I further order the landlord to accept the tenant's monthly rent when it is provided to her on the 1st of every month.

The tenants are authorized to make a onetime rent reduction of \$100.00 from rent payable to the landlord to recover the cost of the filing fee from the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: January 30, 2017

Residential Tenancy Branch