



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated January 31, 2017 and setting the end of tenancy for March 1, 2017.
- b. An order restricting access to the landlord.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary Issues:

At the hearing the landlord referred to a number of photos and documents which he had provided the Branch. The tenants objected stating the landlord has not provided them with copies of those documents. The landlord acknowledged that he had not provided the tenants with these documents. I determined it was not proper to consider those documents as to do so would be a denial of the principles of natural justice and contrary to the Rules of Procedure.

I proceeded with the hearing on the basis of the following evidence:

- oral evidence presented by both parties,
- the landlord's document of a letter to the landlord from the solicitor for the neighbor alleging the landlord was breaching a restrictive covenant (the parties acknowledged that it was given at the same time as the Notice to End Tenancy) and the one Month Notice to End Tenancy submitted by the landlord
- the documentary evidence submitted by the Tenants (those documents had been provided to the landlord). .

The hearing was acrimonious. The female tenant was admonished on a number of occasions for improperly interrupting the testimony of the landlord.

I find that the one Notice to End Tenancy was personally served on the Tenants on February 1, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on February 10, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated January 31, 2017?
- b. Whether the tenants are entitled to an order restricting access to the landlord?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on October 1, 2012. The present rent is \$400 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$400 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - jeopardize a lawful right or interest of another occupant or the landlord

Analysis:

The landlord has the burden of proof to present evidence to establish cause to end the tenancy on a balance of probabilities.

The landlord failed to provide sufficient evidence that the tenants have allowed an unreasonable number of occupants in the unit. The landlord testified a number of people came to visit the tenants. They denied this saying they seldom had visitors and the only occupants of the rental unit are the named tenants. The landlord failed to present sufficient evidence to contradict the tenant's testimony. Accordingly I determined the landlord failed to establish sufficient basis on this ground.

The Notice to End Tenancy alleges the tenants has put the landlord's property at significant risk and that the tenants have engaged in an illegal activity that has, or is likely to jeopardize the lawful right or interest of another occupant or the landlord. I determined the landlord failed to present sufficient proof to establish these grounds for the following reasons:

- The landlord failed to present sufficient evidence to establish the tenants engaged in any illegal activity.
- The landlord testified he received a letter from the lawyer demanding that the tenants move their vehicle as the tenants were restricting access to the neighbors who were attempting to exercise their rights under a restrictive covenant. This letter was written by the solicitor for the neighbors on January 16, 2017. The landlord did not give the tenants a copy of this letter until he gave it with the Notice to End Tenancy served on February 1, 2017. The landlord acknowledged the tenants have not parked their truck in this area since the Notice was served. The tenants testified the landlord never told them they were prohibited from parking on the easement area. The landlord failed to provide sufficient evidence that he previously advised the tenants that parking in this area created a problem. In the circumstances I determined the landlord failed to prove the tenants have or are likely to jeopardize a lawful right or interest of the landlord.
- The tenants deny they have changed the locks to their rental unit. The landlord alleged but failed to prove that the tenants changed the locks to the rental unit.

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated January 31, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The tenants sought an order restricting access to the landlord because they do not have a key to the entrance door. I determined the tenants failed to prove there are grounds for an order restricting access to the landlord. There is insufficient evidence that the

landlord is attempting to access the tenant's rental unit at times not permitted under the Act.

The tenants gave evidence the landlord changed the locks on the garage door thereby limiting their access. The landlord denies this. I determined there is insufficient proof to establish this claim.

As the tenants have been successful with there application to cancel the Notice to End Tenancy I ordered that the landlord reimburse the tenants the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

This decision is final and binding on the parties.

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: March 20, 2017

Residential Tenancy Branch