



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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.

The tenants and the landlord attended the hearing and the landlord was accompanied by a support person who did not testify or take part in the hearing. The landlord and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other.

The parties also agree that all evidence has been exchanged, 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*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2008, and a copy of the tenancy agreement has been provided. Rent in the amount of \$750.00 per month is 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 \$375.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a double-wide manufactured home and includes about 3 acres of property.

The landlord further testified that the tenancy agreement names only one tenant, the first tenant named in the application for dispute resolution (HD). The second named tenant (EV) moved in within the first year of the tenancy and the landlord does not have a tenancy agreement with that tenant, and he still lives in the rental unit. The landlord

believes that the tenant named in the tenancy agreement moved out in September or October, 2016, and witnessed her furniture and belongings being loaded and taken away.

The landlord provided the tenant with written notice to clean the unsightly debris in the yard in January, 2017. A copy is provided and it's dated January 18, 2017 giving 1 months notice to clean up the outside of the property, appliances and other items by March 1, 2017 or a notice to end the tenancy would be issued. The landlord gave a second letter, a copy of which has also been provided for this hearing, which is dated March 1, 2017. It gives the tenant 2 weeks' warning to clean up the outside property. The landlord issued a third letter, also provided, dated March 16, 2017 saying that the landlord has not seen enough progress to show that the tenant is taking the matter seriously, and states that a notice to end the tenancy is attached.

On March 17, 2017 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy has been provided and it is dated March 16, 2017 and contains an effective date of vacancy of April 30, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Tenant has not done required repairs of damage to the unit/site.

Photographs have also been provided which the landlord testified were taken on April 5, 2017. He also testified that the tenants didn't clean up the stuff, and the landlord's insurance doesn't cover a business. The tenant does rental management, and the other person works on houses. The tenants have cleaned up some of the items, but lots of things remain. They moved everything from the yard into the out-buildings which are now piled high full of stuff, and the landlord feels that it's a fire hazard and dangerous. No damage has yet occurred.

The parties had been to Arbitration on December 14, 2016 after the landlord had issued a notice to end the tenancy. The landlord testified that he lost. The tenant had forged some documents, including an Addendum provided for this hearing and another provided for the previous hearing which added the second tenant's name.

In the event that the tenant's application to cancel the notice is dismissed, the landlord would be content with an effective date of vacancy of May 31, 2017 in any Order of Possession that might be issued after this hearing.

The tenant testified that the previous hearing concerned the tenant's application to cancel a notice to end the tenancy given by the landlord because the landlord claimed that the tenant had sub-let. The other tenant named in the application for dispute resolution, the subject of this hearing is the tenant's common-law husband and they've been together for 11 years. They both moved into the rental unit on July 28, 2008 along with the tenant's children, age 12 and 15 at that time. The tenant has not moved out of the rental unit and still lives there. The tenant is a property manager whose head office is in another City and the tenant goes there once per month. At the time of the previous hearing the tenant was going to the coast 3 days per week, but not since January, 2017, and goes there for a week per month to visit family. The tenant has down-sized and moved furniture to sell on Craigslist because she can get a better price than selling locally. The children have moved out, the latest in March, 2016.

The tenant received the landlord's letters, however in January and March, 2017 the ground was still snow covered. The tenant didn't know really what the landlord wanted and assumed he wanted the washers and weight set moved. Photographs have been provided by the tenants, which the tenant testified were taken on April 13, 2017. There is no significant risk, and the tenants are allowed to fill the garage. The items belong to the tenants, the house is clean and rent is paid on time. The tenants complied with the landlord's requests as illustrated in the photographs. The tenant agrees that there are a lot of items in the garage, but it could not magically catch fire or cause the roof to cave in or anything; it's been sitting outside for years. Also, it will soon be time to bring out the summer furniture.

Neither of the tenants run a business on the property, nor do they have a business license. The tenant's common-law spouse does work at other people's houses and keeps parts at the rental unit, but they are behind an outbuilding, so it's not unsightly.

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 reason(s) for issuing it. In this case, the reasons for issuing it are in dispute. Also, the onus is on the landlord to establish that the reasons existed at the time the notice to end the tenancy was issued.

I accept the undisputed testimony of the tenant that when the first 2 notices to clean up the property were provided to the tenant, the acreage was still snow-covered.

Considering the photographs provided by both parties and their testimony, the tenants have cleaned up. The landlord testified that his photographs were taken on April 5, 2017 and the tenant testified that the tenants' photographs were taken on April 13,

2017; 8 days later and there is a significant difference. However, the burden of proof requires the landlord to establish that at the time the notice to end the tenancy was issued, the tenant had put the landlord's property at significant risk. There's no doubt that the rental property contains a lot of items belonging to the tenants, but I am not satisfied that the landlord has established that the property is at significant risk.

There is no evidence before me that the tenants have failed to do required repairs to the rental unit/site, and given that the landlord testified that there is no damage, I find that the landlord has not established the second reason for ending the tenancy. However, the *Act* also requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access, and I order the tenants to comply.

I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*, but I am not satisfied that the landlord has established the reasons for issuing it, and I cancel it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated March 16, 2017 is hereby cancelled and the tenancy continues.

I hereby order the tenants to comply with Section 32 (2) of the *Residential Tenancy Act* by maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenants have access.

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 26, 2017

Residential Tenancy Branch