



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on August 8, 2017.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice issued on August 8, 2017, be cancelled?

Background and Evidence

The tenancy began on August 15, 2012. Current rent in the amount of \$1,050.00 was payable on the first of each month. The tenants paid a security deposit of \$600.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on September 30, 2017.

The reason stated in the Notice was that the tenants have:

- allowed an unreasonable number of occupants in the unit.

The landlord testified that when they entered in to the original tenancy agreement it was with two tenants RB and EB.

The landlord testified that in December 2016, there was a discussion with RB, that there sister PB might be moving into the premises to care for EB. The landlords stated they were never told when RB vacated the premises or when PB moved in.

The landlord testified that recently they saw the basement window being used a door and went to inspect the rental unit. The landlords stated at the inspection they discovered that there were three adults and two children residing in the property.

The landlords testified that the premises in only 900sq feet and has two useable bedrooms. The landlords stated when the rental unit was rented the tenants were told the basement cannot be used as a living area as the concrete floor allows water to penetrate from time to time.

The tenant PB testified that they moved in the premises in December of 2016, with their husband and two children. The tenant stated that they gave the landlord was a copy of a new tenancy agreement to sign; however, they would not sign it. Filed in evidence is a copy of the tenancy agreement.

The landlord responded that they had asked the tenants for a copy of the original tenancy agreement, as they had temporary miss placed their copy. The landlord stated they did not want a copy of unsigned tenancy agreement and they did not even look at it the one the EB, offered.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants have:

- allowed an unreasonable number of occupants in the unit.

In this case the property was rent based on two person occupancy. The tenant RB vacated the premises; however, they did not end the tenancy with the landlord.

RB sisters PB moved into the premise along with their husband and two children increasing the occupancy from 2 to 5. This is a significant increase which was not consented to by the landlord.

While the tenant indicated that they gave the landlord a copy of a new tenancy agreement to sign in December 2016, which shows all the additional occupants; however, I question the copy of the tenancy agreement provided by the tenants, as it included a schedule of parties. The schedule of parties is not for adding occupants to the tenancy agreement; it is for additional applicants or respondents when making a claim for dispute resolution. This leads me to believe that this was added simply to mislead the evidence presented.

I find three adults and two children living in a 900 square foot home, based on two useable bedrooms is unreasonable, when the original agreement was based on two adult occupants for this rental accommodation. Therefore, I find the landlord has proven the Notice.

During the hearing the landlord indicated that if they are successful that they would be agreeable to give the tenants until January 30, 2018, to find new accommodations suitable for their family.

I find that the landlord is entitled to an order of possession effective **January 30, 2018, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court.

Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlord.

Conclusion

The tenants' application to cancel the Notice, issued on August 8, 2017, is dismissed.

The landlord is granted an order of possession.

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: December 01, 2017

Residential Tenancy Branch