



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT CNC LAT MT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for cause; an order that the landlords allow access to and from the rental unit for the tenant or the tenant's guests; and for an order allowing the tenant to change the locks to the rental unit.

The tenant and both landlords attended the hearing and each gave affirmed testimony. 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 by the parties has been reviewed and is considered in this Decision.

During the course of the hearing the tenant withdrew the application for an order that the landlords allow access to and from the rental unit for the tenant or the tenant's guests.

Issue(s) to be Decided

The issues remaining to be decided are:

- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy?
- Have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Has the tenant established that the tenant should be authorized to change the locks to the rental unit?

Background and Evidence

The first landlord (EOS) testified that this month-to-month tenancy began on September 1, 2016, but the tenant didn't actually move into the rental unit until October 7, 2016 because the tenant's belongings hadn't arrived and the tenant stayed in the landlords' residence. The tenant was not charged rent for that time. Rent in the amount of \$1,000.00 is payable on the 1st day of each month and there are currently no rental arrears. The landlords did not collect a security deposit or a pet damage deposit from the tenant. The rental unit is a suite above a barn on a 60 acre farm, and the landlords also reside on the farm.

The landlord further testified that on December 26, 2017 the tenant was personally served with a One Month Notice to End Tenancy for Cause, a copy of which has been provided as evidence for this hearing. It is dated December 26, 2017 and contains an effective date of vacancy of January 31, 2018. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the ledger provided as evidence for this hearing is accurate and that the tenant has only paid rent when it is due 6 or 7 times out of the 17 month tenancy. The transaction record has some inconsistent amounts on it, which the landlord testified were purchases of meat and eggs by the tenant from the farm. Rent is usually paid in cash, and receipts are sent to the tenant by email.

The tenant was permitted to keep some belongings in a common area above the barn on a temporary basis commencing in the spring or summer of 2017 because once the tenant's belongings arrived, they would not all fit in the rental unit. The landlords asked the tenant several times to remove the items but the tenant has refused. Photographs have been provided for this hearing and the landlord testified that it's very messy and unsanitary; the belongings are not covered with a tarp, but covered in bird droppings. The landlords have decided to retire from the farming business and have leased the property to an organic

dairy farmer which includes the hay loft above the barn. The tenant is illegally occupying the hay loft and common area, despite oral and written requests to remove the items.

The landlord further testified that the tenant was told that due to animals/livestock on the property it is important to ensure the gate is kept closed. The landlords had 90 cows and keep the gate chained, but the tenant or the tenant's guests have left it open on many occasions. The landlord approached one visitor who continuously kept the gate open and told the guest to keep it closed, but the guest argued that the electric fence would keep the cows in. It is a big liability issue for the landlords if cows get out onto the road, and on numerous occasions the tenant's night time visitors have left the gate unchained. Photographs and copies of emails and letters have been provided as evidence for this hearing, and the landlord testified that most of the photographs were taken on December 1, 2017 however all are dated the date they were taken.

The second landlord (FLS) testified that the tenant made threats to sue the landlords on a number of occasions for a number of things. The tenant also called the police on 3 occasions and the fire department twice, both due to a low battery in the smoke detector but didn't contact the landlords or a person looking after the place when the landlords were not at home.

If an Order of Possession is granted, the landlords would be content with an effective date of vacancy of March 31, 2018.

The tenant testified that all of the testimony of the landlords is a lie, and the transaction record provided by the landlords regarding repeated late rent is fraudulent and incorrect.

The tenant didn't file the dispute on time because of an ice storm. The tenant left the rental unit without her computer and without a copy of the One Month Notice to End Tenancy for Cause. The ice storm was on or about December 29, 2017 and the tenant was displaced for 5 days due to being without power. Then the tenant couldn't get up the driveway due to trees being down and the tenant didn't have winter tires. The tenant had no internet, and has also provided photographs to corroborate the testimony.

The tenant does not agree with the dates the landlord testified that rent was late. The tenant couldn't pay rent in January until the 3rd of the month because of the storm, and twice was due to hardship which was explained to the landlords, and was paid as soon as the tenant was able. The tenant didn't question the dates on the receipts issued by the landlords because the parties' families have been friends.

At the beginning of the tenancy the tenant's father brought a trailer with the tenant's kitchen items, clothing and Christmas ornaments and the tenant was never told the storage

space was a problem until October 15, 2017. The storage was temporary only until the belongings were moved to the rafters, then the landlord said he didn't care what the tenant did with the barn because the landlords were not going to use it anymore. When the tenant got the letter about removing the items, the tenant didn't have the funds to rent a storage unit. Since the landlords allowed the storage for the duration of the tenancy, the tenant claims that the landlords cannot remove that facility now.

The alarm in the barn triggered other alarms in the building, and there were animals. The tenant was concerned a fire might be smoldering. The tenant felt it most important to contact the fire department as soon as possible.

To the best of the tenant's knowledge, none of the tenant's guests left the gate open except on one occasion when a guest picked up her daughter and was there for maybe 5 or 20 minutes. The landlords' guests and clients leave the gate open.

The tenant wanted to install a lock to the rental unit that is connected to the tenant's phone, but the landlords refused to authorize it leaving the tenant to believe the landlords wanted to go into the rental unit when the tenant was not there. However, the tenant is not aware of any occasions that they may have.

Analysis

Firstly, the *Residential Tenancy Act* provides a tenant with 10 days from the date of service to dispute a One Month Notice to End Tenancy for Cause. To allow additional time, I must be satisfied that there is a compelling reason. In this case, the tenant attributes the late filing to an ice storm. That is questioned by the landlords, but I accept that the tenant had difficulty through no fault of the tenant and I grant the time.

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 given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

The tenant testified that the landlords have lied about everything and the tenant didn't bother to question the dates the receipts for rent were issued. I do not accept that. A minimum of 3 late payments within a recent and reasonable period of time is required to end a tenancy for repeated late rent. I accept the evidence and testimony of the landlords, and I find that the landlords have established repeated late rent, and I find that the landlords had cause to issue the notice to end the tenancy. Therefore, I dismiss the tenant's application to cancel it, and it is not necessary to address the other reasons for issuing it.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. 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 *Act*. Therefore, I grant an Order of Possession in favour of the landlords.

The landlords testified that they would be content if such an order were granted to be effective at the end of March, 2018, and I grant the Order of Possession effective at 1:00 p.m. on March 31, 2018.

Since the tenancy is ending, the balance of the tenant's application is dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on March 31, 2018 and the tenancy will end at that time.

This order is final and binding and may be enforced.

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 08, 2018

Residential Tenancy Branch