



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act*, (the “*Act*”), to cancel One Month Notice to End Tenancy for Cause, (the “*Notice*”) issued on April 17, 2018.

Both the Agent for the Landlord (the Agent) and Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Agent and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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 oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter

On May 10, 2018, the Tenants filed to amend their application to include a request for compensation for damages under section 62 of the *Act*.

The Agent testified that he had not been made aware of the Tenants amendment, and was not prepared to speak to the Tenant’s amended application for financial compensation.

The rule 4.6 of the Rules of Procedure requires that amendments to an application for dispute resolution be received no later than 14 days before the date of the hearing. I am not allowing the Tenants amendment requesting as it was submitted past the cut off date and the Landlord and their Agent had not been given sufficient time to respond.

I will proceed with the Tenant's application requesting to cancel the Notice pursuant to section 47 of the Act.

Issue(s) to be Decided

- Should the One Month Notice to End Tenancy for Cause, issued on April 17, 2018, be cancelled?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenants testified that the tenancy began on July 1, 2003, as a month to month tenancy. Rent in the amount of \$835.00 is to be paid by the first day of each month and at the outset of the tenancy, the Tenants paid a \$382.00 security deposit. The Tenants provided a copy of the tenancy agreement into documentary evidence.

The testimony of both parties is that the Landlord served the Tenants with the Notice on April 17, 2017, to end their tenancy. The notice indicated that the Tenancy would end on May 31, 2018. The reason checked off by the Agent within the 1 Month Notice was as follows:

- *Rental unit /site must be vacated to comply with a government order*

The Agent testified that the Landlord had received a notice from the District of Saanich Bylaw office, dated April 6, 2018, advising them that this tenancy was in violation of Saanich Zoning Bylaw number 8200, section 5.2, which states:

5.2 Prohibited Use of Land, Buildings and Structures

The following uses shall not be permitted in any zone unless expressly permitted in the application zone.

- (1) The use of a tent, trailer, motor vehicle, recreational vehicle or accessory or agricultural building for logging, sleeping, accommodation, or a residence.

The Agent testified that the Landlord was ordered to have the occupants vacate the accessory building that the Tenants occupy no later than July 1, 2018. The Agent provided a copy of the letter into documentary evidence.

The Tenants testified that they had lived there for 15 years without the Bylaw office having a problem, and they do not understand why it is all off sudden an issue. The Tenants testified that they believe that the new renters that had taken over the upper rental unit in the building had caused a disturbance which had led to the Bylaw notice the Landlord received. The Tenants confirmed that they received a copy of the notice from the Bylaw office and that they understood that their tenancy had to end. However, the Tenants wanted to know who had notified the Bylaw office of the rental units located in the accessory building on the property.

The Agent testified that he could confirm that the Landlord had not said anything to the Bylaw office and that the Landlord was disappointed that he had to end the tenancy for both rental units in that building.

The Tenants testified that they had received a letter from the Landlord advising them that they could remain in the rental unit for June at no charge.

The Agent testified that he was not aware of this letter; however, he would not dispute its existence. The Agent testified that he did not require an order of possession, as he believed that the Tenants were reasonable people, and as long as they were out of the rental unit by June 30, 2018, the Landlord would be agreeable.

The Tenants testified that they understood that their tenancy has legally ended in accordance with the *Act* and that they would peacefully vacate the rental unit no later than June 30, 2018.

Analysis

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

I find that both parties to this dispute are in agreement, that this tenancy will end in accordance with the *Act*, on June 30, 2018, and that the Tenants will peacefully surrender possession of the rental unit back to the Landlord no later than 1:00 p.m. on that day.

As the Tenants were not successful in this application, I find that they are not entitled to recover the \$100.00 filing fee paid for this application from the Landlord.

Conclusion

The Tenants application is dismissed. The Notice to End Tenancy date April 16, 2018, is valid and this tenancy will end in accordance with the *Act*, no later than 1:00 p.m. on June 30, 2018.

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: May 25, 2018

Residential Tenancy Branch