



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were also 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 has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord 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?

Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$935.00 per month is currently 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 \$475.00 as well as a pet damage deposit in the amount of \$475.00, both of which are still held in trust by the landlord. The rental unit is one of 2 basement suites in a home, and the upper

unit is also tenanted. A copy of the tenancy agreement has not been provided as evidence for this hearing.

The landlord further testified that on May 19, 2018 the landlord personally handed a One Month Notice to End Tenancy for Cause to the wife of the tenant. A copy has been provided as evidence for this hearing, and it is dated May 17, 2018 and contains an effective date of vacancy of June 20, 2018. The reasons for issuing it state:

- 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.

The driveway for the rental home is circular, on a very busy street with 2 lanes going each way separated by a median. It's safer to enter one side and exit the other, and unsafe to reverse onto the entrance side. The tenant is only to have 1 vehicle by verbal agreement when the tenancy began, but have 2 and one is not insured. The landlord has asked the tenant to move it since November, 2017, but there's always been a reason not to. The tenant is to park 1 car only in a place where it's not obstructing the driveway, but the tenant parks by entering the exit side and blocking the drive way, so that others can only drive out the other way, which is unsafe. The other rental units are permitted a total of 7 vehicles between them. Other tenants have complained, one repeatedly, that the tenant has blocked the driveway. Photographs have been provided, one of which is an aerial view of the rental home, driveway and road.

The landlord further testified that he conducted an inspection of the rental unit on May 15, 2018 and found that shower tiles are broken and the shower handle is missing and a wrench is in its place. The landlord had installed new tiles, but didn't like them. The tenant's father-in-law installed them the second time because the landlord couldn't get someone else fast enough. The tenant's father-in-law is not certified, but the tenant's wife assured the landlord that he could do the work and the landlord paid him \$250.00. Now they are broken; something happened to break the tiles away from the wall and the handle. The landlord talked to the tenant about it who said that it wasn't installed with a membrane, however the landlord does construction work and no membrane is required; only water resistant wall board.

The landlord also testified that the laundry room is a common area and the tenant can do laundry once per week by verbal agreement at the beginning of the tenancy. The tenants were to work that out among themselves, which worked fine. However, the tenant has

stored boxes under a counter in the laundry room, which is not permitted. The tenancy agreement does not include storage. When the landlord talked to the tenant about it, the tenant said that no one has complained. If items go missing, the landlord does not want to create a situation of accusing. Other tenants had belongings in there, but moved them out. The landlord expects tenants to use the laundry room for what it is, and only storing laundry items in there.

Whenever the landlord tries to talk to the tenant, it gets confrontational.

The tenant does not think that using the laundry room is grounds for issuing a notice to end the tenancy, without any written notice. One day the tenant got an envelope with the notice to end the tenancy in it. The tenancy agreement does not mention storage. The tenants had blankets and Christmas items inside cupboards in the laundry room and the other tenant used the other side of the room for storage. The laundry room flooded so the landlord gutted it and reinstalled a table but not cupboards, so the tenant put his belongings back in there under the table. Up until a week ago the other tenant's items were stored in there as well. Photographs have been provided as evidence. The tenant believes the landlord told the other tenant to remove their items the day after the tenant served his evidence to the landlord.

The landlord and the tenant have texted back and forth about the uninsured vehicle but the tenant did not expect eviction. The uninsured vehicle was removed about 4 days after the notice to end the tenancy was served. The landlord did not tell the tenant that others had complained, and no one complained to the tenant. The landlord told tenants to work out the parking situation among them.

The tiles in the bathroom broke away after being installed. The tenants didn't do anything about it because last time it happened, the tenant and his girlfriend had no shower for 2 weeks. The tenant has not damaged it, and the father of the tenant's girlfriend did it so that it would be done quicker, but it's not been done correctly.

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 given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, 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*. The reasons for issuing it are in dispute.

The landlord has not provided any evidence that anyone on the property was significantly interfered or unreasonably disturbed. The landlord testified that he received text messages from other tenants about the parking situation, but has not provided copies, and the tenant testified that no one has complained to him. He also testified that the landlord told the tenants to work out parking among themselves.

With respect to bathroom repairs, I have reviewed the photographs and I am convinced that the repair work completed by the tenant's girlfriend's father was not completed professionally, and it's clear that the landlord knew that he was not certified to do such work. The problems with the bathroom are not the fault of the tenants.

With respect to storage, no one has provided me with a copy of the tenancy agreement, however both parties agree that it is silent with respect to storage. However, I don't see it as being a significant interference, or an unreasonable disturbance, nor has the landlord established that such usage has seriously jeopardized the health or safety or lawful right of anyone.

In the circumstances, I am not satisfied that the alleged breaches of the tenancy agreement are serious enough to warrant ending the tenancy contract, and I cancel the One Month Notice to End Tenancy for Cause.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenant in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated May 17, 2018 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: July 20, 2018

Residential Tenancy Branch