



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On September 13, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a 1 Month Notice to End Tenancy for Cause (“the 1 Month Notice”).

The matter was scheduled as a teleconference hearing. The Landlord’s agent (“the Landlord”) and Tenants appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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 and Procedural Matters

The Landlord testified that they did not serve a copy of their documentary evidence to the Tenants prior to the hearing. I find that disclosure of evidence is a fundamental principle of fairness in an administrative hearing. I find that it would be unfair to the Tenants to accept and consider the Landlords evidence when the Tenants have not had an opportunity to consider and respond to the evidence. The Landlord’s documentary evidence is not accepted and will not be considered.

The Tenant testified that a copy of his documentary evidence was sent to the Landlord using registered mail sent to the out of country address provided in the Landlord’s 1 Month Notice. The Landlord testified that they never received the Tenant’s documentary evidence. The Landlord testified that the Landlord is currently staying in the United States and they did not receive the evidence.

I find that the Tenants relied on the Landlords address for service of documents contained within the 1 Month Notice to end tenancy. I accept the Tenant’s testimony

that the evidence was sent to the Landlord's address using registered mail. It finds that the evidence was served in accordance with sections 89 and 90 of the Act. The Tenants' evidence is deemed received by the Landlord five days after it was mailed.

Issues to be Decided

- Does the Landlord have sufficient cause to end the tenancy and is the Landlord entitled to an order of possession?

Background and Evidence

The Tenants have lived in the rental unit for 23 years. Rent in the amount of \$1,530 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$500.00. The Tenants testified that they have never met the Landlord who lives out of the country and communication for the tenancy is via email.

The Landlord testified that they issued the Tenants a 1 Month Notice To End Tenancy For Cause dated September 10, 2018 ("the 1 Month Notice")

The reasons for ending the tenancy within the 1 Month Notice are as follows:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord.*

Tenant has engaged in illegal activity that has, or is likely to:

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.*
- *Jeopardize a lawful right or interest of another occupant or the Landlord*

The Landlord testified that the strata council for the rental property has charged the Landlord \$19,000.00 in fines due to allegations that the Tenants are being a nuisance and operating a business out of the rental unit. The allegations include operating an escort business and filming an adult movie in the pool area of the property. The Landlord testified that the Tenants refuse to pay the fines.

The Landlord issued the 1 Month Notice because the fines have not been dealt with. The Landlord testified that the Landlord cannot prove the allegations made from the strata.

The Landlord testified that the Landlord objected to the fines and appealed the fines. The Landlord testified that they asked the strata for a hearing because they do not believe the reasons for the fines are valid.

In response to the Landlord's testimony, the Tenant testified that the allegations did not stop the Landlord from recently entering into a new tenancy agreement with them. The Tenant testified that they have done nothing illegal or wrong. The Tenant submitted that his wife is a former playmate and is retired but still has a website which is not against the law. The Tenant testified that he has never filmed a commercial movie on the property and has never operated a prostitution business. The Tenant testified that the Landlord was aware of the website.

The Tenant testified that in late 2016, he went down to the pool area and filmed a video with his wife. He was subsequently banned from using the pool area and fitness room. The Tenant testified that the video was not inappropriate and the ban was lifted and he has full use of the facilities.

The Tenant testified that he never signed any schedule K documents related to strata rules or payment of strata fines.

The Tenant testified that he had a political disagreement with the president of the strata council. He submitted that the strata president does not like him because of his political beliefs.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons listed in the 1 Month Notice are valid.

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

The Landlord cannot prove the allegations made against the Tenants from the strata council.

While I recognize that the allegations of nuisance are directly related to fines, I find that the reason for the issuance of the 1 Month Notice is more about the Tenants' failure to pay fines levied against the owner, than a concern over the Tenants' behaviour. The Landlord testified that they asked the strata for a hearing because they do not believe the reasons are valid.

I find that the Landlords position that the Tenants are responsible to pay the fines is not reasonable considering that the Landlords do not believe that the reasons behind the fines are valid and they have no proof of the allegations made against the Tenants.

If the Landlord had concerns about the Tenants behaviour on the rental property; such as the alleged incident in the pool area, I would expect that the Landlord would not wait almost two years to take action.

There is insufficient evidence from the Landlord that the Tenants are operating a business out of the rental unit.

I find that the Landlord has not provided sufficient evidence to support an unreasonable disturbance or illegal activity by the Tenants; therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated September 10, 2018.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated September 10, 2018, is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: November 6, 2018

Residential Tenancy Branch