



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlords confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlords testified that they did not upload any documentary evidence to the residential tenancy branch system, nor provide any to the tenant. I find that all parties have been served with the required documents in accordance with the Act.

The landlords testified that they attempted to upload documents, including photos of the rental property, the night before the hearing, but were unable to. Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The landlord testified that they were unaware of this rule. This does not, however, relieve them of their obligation to comply with the Rule, however. Parties are expected to comply with the Rules of Procedure which govern these proceedings.

The landlords relied solely on their oral testimony during this hearing.

Issue(s) to be Decided

Is the tenant entitled to:

- 1) the cancellation of the Notice;
- 2) recover his filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting January 1, 2003. Monthly rent is currently \$1352.03. The tenant paid the landlords a security deposit of \$475.00. The landlords still retains this deposit.

The landlords testified that the tenant was personally served with the Notice on March 3, 2019. The Notice indicates an effective move-out date of April 30, 2019. The tenant confirmed receipt of the Notice.

The grounds to end the tenancy cited in that Notice were:

- 1) the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- 2) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The landlords wrote provided details of the cause for ending the tenancy on the Notice as:

Significant hoarding has occurred inside the house and outside. All leanto's has to be removed. 2 cars permitted as per the tenancy agreement ALL OTHER CARS MUST BE REMOVED.

Landlord KH testified that he attended the rental unit to fix a broken toilet. He testified that when he entered to rental unit he encountered "so much clutter [he] had to go down the hallway sideways". He also testified that the bathroom was so cluttered that there was no room to work in it. Landlord KH testified that access to the electrical panel and the hot water tank were blocked. Landlord SH testified that she spoke with the a representative of the municipality, who advised her that for safety concerns there must be access to the electrical panel and hot water tank.

Landlord KH also testified that the tenant keeps six vehicles on the rental property, which impede the access of emergency vehicles. He testified that the backyard of the rental unit has a great deal of debris, including wire and sheet metal, which would impede emergency access.

The landlords testified that the tenancy agreement restricted the tenant to having no more than two vehicles on the rental property. No copy of the tenancy agreement was entered into evidence.

The tenant denied that the tenancy agreement restricted the number of vehicles he could have on the property. He testified that the landlords did not provide him with a copy of the tenancy agreement in 2003, but, in 2014, the landlord provided him with a copy (which he had not signed), which included a term restricting the number of vehicles he could have on the rental property to two. He testified that this tenancy agreement was not what he signed in 2003, and was not binding on him.

The tenant testified that he has "lots of antiques and collectibles" in the house, but that they do not block access to the electrical panel or hot water tank. He testified that he stores them in a portion of the rental unit that he does not use.

The tenant also testified that the tenancy agreement does not restrict the number of vehicles that he is permitted to have on the property, and that the driveway is wide enough to allow access for a firetruck, even with the vehicles he has parked on it.

The tenant testified that after receiving the Notice, he removed all debris in the backyard.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord must prove that the reasons for issuing the Notice exist.

Neither party uploaded a copy of the tenancy agreement into evidence. There is a dispute between the parties as to whether the tenancy agreement restricted the number of vehicles the tenant could keep on the rental property. The landlords argue the tenancy agreement restricts the tenant to two vehicles, the tenant denies such a restriction exists. The landlords bear the onus to prove this fact. I find that they have not, on a balance of probabilities. As such, I find that the tenant has not breached a material term of the tenancy agreement, as alleged on the Notice.

The landlords claim that the number of vehicles on the driveway would impede emergency vehicles from gaining access to the rental property. The tenant denies this. The landlords have the onus to prove that this is the case. They have failed to provide me with any documentary evidence (photographs or letters from emergency services who have viewed the rental property, for example) which would corroborate their testimony. As such, I cannot determine which of the parties' testimony is accurate. As such, I find that the landlords have failed to discharge their evidentiary onus.

The parties also disagree as to whether the electrical panel and hot water heater are impeded within the rental unit. Again, with no documentary evidence in support of this claim, and in light of the parties' conflicting testimony, I find that the landlords have failed to discharge their evidentiary onus.

On the Notice, the landlords wrote that the tenant has put the landlord's property at significant risk. Based on the landlords' oral testimony, I understand this to mean that the condition the tenant has kept the property has caused it to become inaccessible to emergency services, which pose a hazard to the property. In certain circumstances this would be a sufficient basis to end a tenancy. However, in the present case, the landlords have provided no documentary evidence to support this assertion. Without photographic confirmation of their allegations, and in the face of contradictory testimony from the tenant, I find that the landlords have failed to discharge their evidentiary burden to prove the validity of the allegations set out on the Notice.

As such, I order that the Notice is cancelled, and of no force or effect.

As the tenant has been successful in this application, I order that the landlords pay him \$100.00, representing the recovery of his filing fee.

Conclusion

Pursuant to section 47, I order that the Notice is cancelled.

Pursuant to section 67 and 72, I order that the landlords pay the tenant \$100.00

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 14, 2019

Residential Tenancy Branch