



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Tenants were present for the teleconference hearing, as was the Landlord and a friend who was translating for the Landlord (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Landlord submitted evidence to the Residential Tenancy Branch the day before the hearing and did not serve a copy of this evidence to the Tenants. As the Landlord’s evidence was not submitted to the Residential Tenancy Branch or served to the Tenants in accordance with the *Residential Tenancy Branch Rules of Procedure*, it is not accepted and will not be considered in this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenants stated that the tenancy began approximately 14 years ago with a previous Landlord. Current monthly rent is \$685.57 and a security deposit of \$325.00 was paid at the start of the tenancy.

The Landlord stated that he purchased the home approximately 4 years ago with the tenancy already in place. He was in agreement as to the current monthly rent amount.

The Landlord testified that the One Month Notice was served to the Tenants in person on May 5, 2019. The Tenants confirmed receipt of the notice on this date.

The One Month Notice was submitted into evidence by the Tenants and states the following as the reasons for ending the tenancy:

- 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
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park

The Landlord testified as to the reasons for the notice and stated that this includes that his daughter needs to move into the rental unit. The Landlord also stated that he wants the rental unit empty, so he can complete renovations and sell the home.

The Landlord provided further testimony that the Tenants are putting out food for wild animals which is causing concern for raccoons and other animals on the property. He noted that rodents were on the property and caused significant damage to his car and led to money spent on pest control. He also noted that rodents caused damage to the door to the rental unit. The Landlord stated that the Tenants also listen to the television too loudly which disturbs his sleep when he has to get up early for work.

Lastly, the Landlord stated that the Tenants have refused to pay rent increases which he has been trying to implement for a long time.

The Tenants testified that there are wild animals present on the property and they are not engaging in any illegal activity. They further stated that they are very quiet and there is no concern with how loudly they are watching television. The Tenants stated that the Landlord has issued them many notices to end tenancy for different reasons each time.

The Tenants stated that the only damage to the door to the rental unit is from the Landlord kicking the door. They also stated that they have been willing to pay legal rent increases and after he tried to raise the rent \$300.00, they informed him of the proper process for increasing the rent. The Tenants stated that the Landlord increased the rent for approximately two years but has since stopped. They noted that they have never refused to pay a rent increase that was issued in accordance with the law.

Analysis

Section 47(4) of the *Act* states that a tenant has 10 days to dispute a One Month Notice. As the Tenants received the One Month Notice on May 5, 2019 and filed the Application for Dispute Resolution on May 13, 2019, I find that the Tenants applied within the time allowable under the *Act*. Therefore, the matter before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid. Therefore, the Landlord has the burden of proof.

The Landlord testified that his daughter needs to move into the rental unit and that he wants the unit empty to complete renovations and sell the property. However, these are not valid reasons to serve a One Month Notice pursuant to Section 47 of the *Act*.

The Landlord also testified as to damage to the door of the rental unit, the Tenants attracting wild animals by feeding them, and noise disturbance caused by listening to the television too loudly. However, there was no accepted documentary evidence to support these claims which were denied by the Tenants. I also do not find these issues as brought up by the Landlord to be significant enough to end the tenancy through a One Month Notice and do not find that the testimony of the Landlord established illegal

activity or significant damage to the property as stated on the notice. As such, I am not satisfied that the One Month Notice is valid.

Instead, based on the Landlord's testimony regarding other reasons for ending the tenancy, I find it likely that the Landlord is using the One Month Notice to end the tenancy for reasons other than those as stated under Section 47 of the *Act*. I caution the Landlord that there is a proper process under the *Act* to end a tenancy for landlord's use of property or for renovations which require the rental unit to be vacant and this process cannot be ignored.

Therefore, as I do not find that the reasons for the One Month Notice are valid, the Tenants' application to cancel the notice is successful.

As the Tenants were successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the application in the amount of \$100.00. The Tenants may deduct \$100.00 from their next monthly rent payment as satisfaction of this fee.

Conclusion

The One Month Notice dated May 5, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenants may deduct \$100.00 from their next monthly rent payment to recover the filing fee paid for the application.

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: June 28, 2019

Residential Tenancy Branch