



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), an order suspending or setting conditions on the landlord's right to enter the rental unit, and for recovery of the filing fee paid for this application.

The tenants attended the telephone conference call hearing; the landlord did not attend.

The tenants testified that they served the landlord with their application for dispute resolution and notice of hearing by registered mail on June 27, 2019. The tenants supplied the Canada Post receipt, and said they sent it to the landlord's address listed on the written tenancy agreement.

Based upon the submissions of the tenants, I accept the landlord was served notice of this hearing and the tenants' application in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord's Notice?

Are the tenants entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.

Are the tenants entitled to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted by the tenants shows that this tenancy began on January 1, 2017, that monthly rent began at \$1,200.00 and that they paid a security deposit of \$600.00 at the start of the tenancy. The tenants also submitted that the current monthly rent is \$1,300.00.

The tenants submitted that the landlord served them with the Notice on June 20, 2019, by hand delivery. The move-out date listed on the Notice was July 31, 2019.

The cause listed on the Notice, submitted into evidence by the tenants, alleged that the tenants have assigned or sublet the rental unit without the landlord's written consent.

The tenants denied that they have sublet or assigned the rental unit, as they still live there, maintain their residency there, pay the monthly rent, and that their family members live there when they are traveling.

The landlord also listed on the Notice that the tenants have a pet on the premises and were not given permission to have a pet.

The tenants submitted that there is no restriction in the tenancy agreement regarding pets and that they have the landlord's verbal permission to have a pet. The tenants submitted that the landlord has met their pet and did not say anything at all.

As to the tenants' request for restricting the landlord's right to enter the rental unit, the tenants said that the landlord has come into their rental unit without notice, uninvited, or approval otherwise. The tenants submitted copies of text messages showing that to be the case.

The tenants at the hearing requested to change the locks to the rental unit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Cancellation of the Notice-

When a landlord issues a notice to end a tenancy and the tenant files an application to dispute the notice, the landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to prove the causes alleged on their Notice.

In this case, the Notice was issued pursuant to section 47(1)(l), for alleged cause and I accept the tenants' undisputed evidence that they received the Notice on June 20, 2019, the date of the Notice.

As the tenants' application was filed on June 21, 2019, I find that they disputed the Notice within the timeframe required under the Act.

In the absence of the landlord or any evidence from the landlord to support the ground listed in the Notice, I find that it must be set aside.

I therefore order that the Notice dated and served on June 20, 2019, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

Order suspending or setting conditions on the landlord's right to enter the rental unit-

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the Act.

Pursuant to section 29 of the Act, a landlord **may not** enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date. (emphasis added)

In considering the undisputed evidence of the tenants, I find that the landlord has entered the rental unit without proper notice.

I inform the landlord he is to provide the tenants with a proper written notice to enter the rental unit, which must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the Act. If the landlord chooses to attach the notice of entry to the tenants' door, the tenants are not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to send the notice by registered mail, the tenants are not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

I invite the landlord to review section 88 of the Act for information on the proper way to serve of documents, such as a notice to enter a rental unit. Text message communication is not an accepted method of serving documents.

I therefore order the landlord to comply with their obligations as described above in providing notice to the tenants, which must also contain the specific time, date, and purpose for entering.

As I have ordered the landlord to comply with their obligations under sections 28 and 29 of the Act, I will not at this time suspend the landlord's rights under these sections to enter the rental unit, upon proper notice to the tenants.

The landlord is advised that their failure to comply with this order may subject the landlord to financial compensation being granted to the tenants for their loss of quiet enjoyment and for an order suspending the landlord's rights to enter the rental unit.

Filing fee-

I allow the tenants recovery of their filing fee of \$100.00, and direct them to deduct this amount from their next or a future month's rent payment in satisfaction of their monetary award, notifying the landlord of when this deduction is being made.

The landlord may not serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") when the tenants have made this deduction of \$100.00.

Conclusion

The tenants' application is granted.

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: August 13, 2019

Residential Tenancy Branch