



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNC OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on July 6, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause dated June 30, 2020 (the "One Month Notice");
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing and provided affirmed testimony.

The Tenants testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. Canada Post registered mail documents were submitted in support and the Landlord acknowledged receipt of the documents. In addition, the Landlord testified that the documentary evidence to be relied upon was served on the Tenants in person. The Tenants acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice?
2. Are the Tenants entitled to an order that the Landlord comply with the Act, regulation, and/or the tenancy agreement?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on October 1, 2019 and continues on a month-to-month basis. Rent in the amount of \$1,500.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$750.00, which the Landlord holds.

The Tenants testified the One Month Notice was received on June 30, 2020. The One Month Notice was issued on the basis that the Tenants breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Specifically, Landlord testified that the tenancy agreement states that no trailers or unlicensed vehicles are permitted on the property. The addendum to the tenancy agreement states, in part:

- *No unlicensed cars.*
- *No RV's of any kind to be parked on the property.*
- *No vehicles licensed to other people than the listed renters*
- *No Motorcycles*
- *All vehicles to be parked on the property on the driveway, not lawn.*
- *No multiday vehicle repairs*

...

All of the addendum items above have caused issues with the neighbors in the past. They will be terms for eviction.

[Reproduced as written.]

The Landlord testified that the Tenants keep a utility trailer and an unlicensed vehicle on the rental property. The Landlord also testified that there is a “wrecked” motorcycle and parts on the rental property. The Landlord acknowledged that he did not submit photographs of the trailer or vehicles of concern. However, the Landlord did submit a copy of a text message dated March 25, 2020 which states: “Yeah we need to talk about the mess in the front yard. Rental agreement states no motorcycles, trailer and unlicensed vehicles. Can we get this cleaned up by months end”. The Landlord also suggested the Tenants’ “attitude” has “poisoned the well” with the tenants in the unit below. The Landlord also referred to the Tenants’ actions as abusive.

In reply, the Tenants testified they have a small, 4’x6’ utility trailer on the property that is stored beside a shed in the back yard, which does not fall under the terms of the addendum. Photographs depicting the utility trailer were submitted into evidence. Further, the Tenants testified that the vehicle the Landlord is concerned about has always been insured. The Tenants submitted a copy of insurance documents dated April 17, 2020 into evidence. The Tenants testified they “love” the rental unit and keep it tidy. They do not understand why the Landlord wishes to end the tenancy.

The Tenants also sought to recover the filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47(1)(h) of the *Act* permits a landlord to take steps to end a tenancy when a tenant fails to comply with a material term of a tenancy agreement and does not correct the situation within a reasonable time after the landlord gives written notice to do so. Section 47(4) confirms that a tenant who receives a notice to end tenancy under this section has 10 days to dispute the notice by making an application for dispute resolution. Section 47(5) of the *Act* confirms that failure to do so results in the conclusive presumption that the tenant accepts that the tenancy ends on the effective date of the notice to end tenancy and must vacate the rental unit. The burden of proof of the basis for issuing the notice to end tenancy rests with the landlord.

In this case, I find that the Tenants received the One Month Notice on June 30, 2020 and disputed it on time on July 6, 2020. However, I find there is insufficient evidence before me to uphold the One Month Notice. The Landlord acknowledged that he did not submit photographic evidence of the trailer and vehicles of concern, or of any mess in the yard. Further, I am not satisfied the utility trailer falls under the terms of the tenancy agreement as articulated in the addendum, which refers only to RVs. I also find there is insufficient evidence to conclude the Tenants vehicle is not insured. Indeed, the Tenants provided documentary evidence in support of the assertion the vehicle is insured.

Considering the above, I find the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenants are entitled to recover the filing fee paid to make the Application. I order that \$100.00 may be deducted from a future rent payment at the Tenants' discretion.

Conclusion

I order that the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the *Act*.

I order that the Tenants are entitled to recover the filing fee paid to make the Application and that \$100.00 may be deducted from a future rent payment at the Tenants' discretion.

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 31, 2020

Residential Tenancy Branch