



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$850.00 is payable on the 1st day of each month, in addition to \$40.00 per month for fiber optic connections and one-third of utilities. A copy of the tenancy agreement has been provided as evidence for this hearing which specifies a security deposit in the amount of \$850.00, but the landlord collected only \$425.00, being half of the monthly rent. That sum is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the landlord and family reside in the upper level of the home.

The tenant is currently in arrears of rent the sum of \$1,700.00 as well as unpaid utilities and the \$40.00 for fiber optics for 2 months. The tenant has not missed any work, but has not paid any rent.

The landlord further testified that on June 28, 2020 the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated June 28, 2020 and contains an effective date of vacancy of July 31, 2020. The reason for issuing it states: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The tenant is required to park on the street, which is specified in the tenancy agreement, but for the last 5 or 6 months the tenant's truck was out of order and the tenant left it parked in the carport. The carport is not a part of the tenancy agreement, and the landlord asked the tenant to park on the street. The tenant said he would move the vehicle, but didn't do so. Now the tenant has a motor-bike and runs it outside the window disturbing the landlord's wife while sleeping. Copies of text messages exchanged between the parties have been provided as evidence for this hearing.

The tenant testified that in his opinion, the landlord is evicting the tenant for using the driveway, but the tenancy agreement says parking for 1 is permitted, on the street, but the tenant can park as many vehicles as he wants on the street. Therefore, it's not a reason to end the tenancy.

The tenant also testified that the day he moved into the rental unit the parties had a verbal agreement allowing the tenant to park in the driveway, and the tenant has been using that parking spot with no problems until recently when the landlord's daughter moved into the house. The landlord has not given the tenant any written notice about a breach of a material term of the tenancy agreement.

The tenant has started his motor-bike a few times, but usually off the property.

The tenant also testified that he hasn't been getting the work that he's used to getting, so hasn't paid the landlord.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reason for issuing it is in dispute.

The tenant disputes that the landlord has given any written notice of a breach of a material term. The landlord has provided numerous text messages. One text message dated April 12, 2020 asks the tenant to move the car, but the tenant replied that he was out of town, and the landlord replied, "Ok, don't worry!" Another is dated June 7, 2020 and asks that the tenant read the agreement respecting parking. The next is dated

June 26, 2020 asking that the tenant move his truck because the landlord's daughter will move in on June 28. The text message from the landlord sent June 28, 2020 states that despite being asked several times during the last couple of months, the tenant has ignored requests to move the truck from the landlord's driveway, and the landlord intends to give notice to vacate the rental unit. The tenant replied that he will move out on July 31, 2020.

The *Residential Tenancy Act* also specifies that in order to be effective, a notice to end a tenancy, when given by a landlord, must be in the approved form. The landlord has used the form that is no longer the approved form. The form of the notice was changed in March, 2020, and the form used was issued in June, 2020.

Further, to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

In this case, that has not happened. I do not agree with the tenant that parking in the driveway or carport is permitted, however I am not satisfied that the landlord has notified the tenant in writing or given a deadline, or that the landlord has used the approved form. Text messages do not suffice. Therefore, I cancel the Notice and the tenancy continues.

I order the tenant to comply with the tenancy agreement by parking on the street only.

Since the tenant has been successful with the application the tenant is entitled to recovery of the \$100.00 filing fee, and I order that the tenant be permitted to reduce rental arrears, or rent for a future month by that amount, on a one-time basis only.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated June 28, 2020 is hereby cancelled and the tenancy continues.

I order the tenant to comply with the tenancy agreement by parking on the street only, and not in the driveway or carport.

I order that the tenant be permitted to reduce rental arrears or rent for a future month by \$100.00, on a one-time basis only as recovery of the filing fee.

This order is final and binding and may be enforced.

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 07, 2020

Residential Tenancy Branch