



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNE, LRE, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; an order cancelling a notice to end the tenancy for end of employment; an order limiting or setting conditions on the landlord's right to enter the rental unit; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing, and the tenants were accompanied by Legal Counsel. The landlord and one of the tenants gave affirmed testimony, and the landlord called 2 witnesses who also gave affirmed testimony. The parties, or counsel, were given the opportunity to question each other and the witnesses, and to 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.

Issues to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause or End of Employment was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Have the tenants established that the landlord's right to enter the rental unit should be limited?

Background and Evidence

The landlord testified that this month-to-month tenancy began 16 years ago and the tenants still reside in the rental unit. Rent in the amount of \$1,262.00 per month is payable

on the 1st day of each month, and there are no rental arrears. A security deposit was collected from the tenants at the beginning of the tenancy, which is still held in trust by the landlord, but he does not recall the amount, only that it was half the amount of rent payable at that time. No pet damage deposit was collected. The rental unit is a side-by-side duplex, both of which are owned by the landlord, and both are tenanted. The landlord does not reside on the rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

On July 12, 2020 the landlord personally served to the male tenant a One Month Notice to End Tenancy For Cause or End of Employment (the Notice), and a copy has been provided for this hearing. It is dated July 12, 2020 and contains an effective date of vacancy of August 31, 2020. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site/property/park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause(s) section states:

1. Marijuana smoke drifting into adjacent duplex – huge health issue to family & young daughter next door
2. Unkept condition of property
3. collection of junk in front, side and behind the property
4. 28' trailer parked on the front lawn for past 8 months not moved posing a huge safety concern
5. holes have been punched in 2 doors on the premises
6. Vinyl ripped out and not replaced in entrance way
7. Front and back lawns are unkept and are now totally weeds
8. Dogs defecate on adjacent lawn to avoid weeds at this property
9. Recent inspection revealed hoarding.

The landlord further testified that in the last 2 years the tenants have been “a lot more steady” paying rent, but the landlord has provided numerous notices to end the tenancy which were served on the tenants in previous years.

The tenants smoke pot and it drifts into the other unit and is so bad that the neighbouring tenants and their 11 year old daughter are constantly disturbed to the point that in trying to mitigate, they have to keep laundry room door closed in their suite. The main issue is marihuana smoking, which is a health hazard to the other tenants and their 11 year old daughter.

Recently when this eviction process started, the tenants have been very, very intimidating to the neighbour and company to the point where on last Thursday she phoned me at supper time in great distress saying that the tenant called her a big fat f'g bitch. The other tenant was in back yard shooting a cross-bow into a fence which he had never done before. They also threatened the neighbours that they were going to get their son to get some of his buddies together and cause physical harm to them or property, and over the weekend their car window was smashed. The pattern indicates the tenants caused the damage.

The landlord has also provided photographs, which he testified show a lack of care and damage to the rental unit. The landlord called to do an inspection and was shocked when he went inside. Damage to the property that has not been repaired was very visible, with the foyer absolutely packed with stuff. Following which the landlord sent a letter to the tenants outlining a whole list of items that needed to be addressed. That was during the summer of 2019. On December 20, 2019 the landlord returned with a contractor who took photographs of the significant damage, such as holes in doors, damaged linoleum at the front entrance, and the tenants have not kept the property in a clean and kempt fashion, which is a breach of a material term of the tenancy agreement. Copies of letters addressed to the tenants have also been provided for this hearing. The tenancy agreement specifies that the rental unit will be kept in a clean condition both inside and out.

The landlord's first witness (DC) is a contractor who has done work at the landlord's house. He viewed it with the landlord on December 20, 2019 and witnessed dog pee on the carpet and entrance, and upstairs is the same. In the kitchen the witness saw vinyl tiles broken and cut with a knife. There also appears to be water damage causing tiles to break.

The witness is not a smoker, and when he arrived there was a strong marihuana and smoke smell. He told the landlord that he could not work there with the strong smell, and would need a mask.

The witness also saw a few doors with holes that need to be replaced as well as damage to paint. The witness did not go into bedrooms, but saw lots of boxes piled in the living room and downstairs stacked up throughout. Everything would need to be cleaned up

before the witness could get in to fix the walls and carpets. The tenants haven't fixed anything and it's a big mess inside now and too much stuff inside the house. All rooms need fixing which will take months. The witness took the photographs provided for this hearing.

The landlord's second witness (ST) testified that she lives on the other side of the duplex and has been there for almost 3 years.

The witness also testified that due to marihuana smoke coming from the other side of the duplex the witness has to keep her laundry room door closed or the smoke drifts through. Sometimes the witness hangs clothing to dry but is afraid of the smell, which is sometimes very strong and powerful, and not good for her 11 year old daughter to smell it. While the neighbours are smoking in the laundry room, the smoke goes into the witness' laundry room.

The witness also testified that she doesn't know what to expect when she goes outside. A window on her truck was smashed, and although she's not sure if it's related, it's fishy. The witness has never seen anyone in the back yard, or a cross bow, but only since she agreed to be a witness for this hearing. The tenants are blaming the witness, who's been called a rat. The witness had sent an email to the landlord, and the witness assumes the tenants read it and that's when things started to happen. The window got smashed and police were called. They don't need to take it out on the witness and her family. The witness has been yelled at, who yelled back, but didn't call the tenants names or threaten them.

The witness also testified that the tenants' dogs pee and wander onto the witness' lawn and nothing gets cleaned up. She has seen it happen and the witness cleans it up, not the tenants.

The tenant testified that there is a hole in the ceiling in the laundry room, not caused by the tenants, and the tenant told the landlord to fill it in.

Numerous photographs have been provided for this hearing, which were explained by the tenant and were taken just after the tenants received the eviction notice. When their children were younger, they punched holes in the walls and closet doors, but there are now new doors.

The tenant disputes a bad smell, and testified there is no urine downstairs at all. When they moved in there was a small hole in the flooring, and when the tenants got a puppy, he ripped it more, which was explained to the landlord. The landlord said that he would pay

for half but when the tenants found someone to do it, the landlord said that it's not in the budget.

The rental unit suffered a bad leak, so the tenant got ahold of the landlord who got a plumber who cut a big hole in the corner of the ceiling. The tenant's husband wouldn't allow him to cut a hole in the shower. The leak left a stain on the carpet, and the plumber fixed the hole at least 8 or 9 years ago.

The landlord wanted to inspect at 6:00 a.m. on December 20, 2019. The tenant put stuff in a room and never expected the landlord to take photographs; it doesn't look like that; it was cleaned out right away.

The tenant's husband has a spinal cord injury, and the tenants required help to have some things cleaned out of the back yard. The tenant's husband has a medical marijuana license, but usually smokes it in the dining room, not the laundry room.

When asked about clutter this summer, the tenant testified that the tenants can only get certain people to help, and they put the unwanted items from the back yard to the side of the house until they could get rid of it.

LANDLORD'S SUBMISSIONS:

Documents were served properly and reasons for cause are justified in terms of damage, lack of care of the property, and the landlord is worried for the safety of other tenants, who are entitled to a safe environment to live in. The landlord has asked many times to stop but the tenants seem entitled to smoke pot. There's too much intimidation and suspicious activity since the Notice was issued.

The landlord agrees that if the tenancy ends, the landlord would be content with an Order of Possession effective October 31, 2020, if the tenants pay October rent.

SUBMISSIONS OF THE TENANTS' LEGAL COUNSEL:

Firstly, a statutory declaration of the tenant has an incorrect date on paragraph 6, which should say July 12, not August 7.

The landlord missed the opportunity to end the tenancy for repeated late rent. The dates were historical and the landlord testified that the tenants have been paying rent on time recently.

The tenants have resided in this rental unit for 16 years and have been smoking for a significant amount of time, and there's no evidence that the landlord ever did anything about it.

With respect to damage, the tenant went over all the photographs and testified that the damage to doors has been repaired.

Analysis

The *Residential Tenancy Act* requires a tenant to dispute a One Month Notice to End Tenancy For Cause or End of Employment (the Notice) within 10 days of service. In this case, the Notice was given in person on July 12, 2020 and the tenants filed the application on July 31, 2020. The Statutory Declaration explains a reason for the delay, being confusion and misinformation resulting in the tenants filing an application seeking only emergency repairs. The tenants have not applied for more time to dispute the Notice, but the landlord, who has received all of the tenants' evidence, did not raise it, and I accept the Statutory Declaration as an application for more time than prescribed to dispute the Notice.

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 reasons for issuing it are in dispute.

A minimum of 3 late rent payments are required to end a tenancy for repeated late rent, and they must be recent. I agree with counsel for the tenants that the landlord has missed the opportunity, having testified that the tenants have paid on time over the last 2 years.

The landlord testified that the main problem is smoking marihuana. There is nothing in the tenancy agreement that prohibits the tenants from smoking in the rental unit or on the rental property. Smoking marihuana is not illegal, and although other tenants might be uncomfortable, given that it's not prohibited, the landlord cannot end a tenancy for smoking.

I have reviewed all of the photographs and letters, and I also consider the testimony of the landlord's first witness who stated that there were lots of boxes piled in the living room and downstairs. He also testified that it's a big mess, and the tenants are not looking after the rental unit in a normal caring manner. They don't fix anything. He also testified that there's too much stuff inside the house, and a very strong smell of dog urine and marihuana. He testified that it would take months to finish repairs.

I also consider the landlord's letter to the tenants dated July 30, 2019 which asks that the front and side of the duplex be cleared up no later than August 31, 2019, and a truck parked on the side front lawn for well over a year. One of the photographs provided by

the landlord is dated July 8, 2019, and the one dated July 6, 2020 doesn't show much improvement.

On October 3, 2019 the landlord provided a letter to the tenants stating that a huge clean out in every room is required, the outside walkway was full of junk and setting out some required repairs. Several letters over the years from the landlord asks that the tenants clean up the debris piled up around the rental unit.

The other photographs provided by the landlord are dated December 20, 2019, when the witness attended, and July 6, 2020, prior to issuing the Notice.

The tenant testified that the tenants' photographs were taken right after the landlord served the Notice, which was July 12, 2020, 6 or 7 days after the landlord's photographs were taken. The tenant testified that the doors have been repaired and the evidentiary material shows that they were repaired in August, 2020. The Statutory Declaration of the tenant also states that the landlord's claim of a collection of junk surrounding the property were items taken to the unit about 2 years ago and belonged to her husband's deceased brother. It also states that the items were on the property for no more than a few months, and have since been removed. What I must consider is whether or not the landlord had cause to issue the Notice at the time it was issued, not what has happened since. Further, considering the letters written by the landlord, although he did not testify how or when they were sent or given to the tenants, the tenants did not dispute that evidence. Therefore, I don't accept that the tenants have cleared up the property or had done so prior to the issuance of the Notice.

To end a tenancy agreement for breach of a material term the party alleging a breach 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.

The landlord did all of that.

In the circumstances, I find that the landlord has established breach of a material term of the tenancy agreement that was not corrected within a reasonable time to do so, by failing to remove debris from the yard after numerous requests by the landlord.

The tenants' application for an order cancelling the Notice is dismissed.

The *Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord so long as the notice given is in the approved form. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord.

The landlord testified that he would be content with an Order of Possession effective October 31, 2020 if the tenants pay rent for October. The effective date of vacancy contained in the Notice has passed, and therefore I grant the Order of Possession effective on 2 days notice to the tenants, and I leave it to the landlord to decide when to serve it on the tenants.

The tenants raised no evidence with respect to the application for an order limiting or setting conditions on the landlord's right to enter the rental unit. In order to be successful with such an application the tenant must raise some issues about the landlord entering the rental unit contrary to the law. Since the tenants have not done so, I dismiss that portion of the tenants' application.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

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: September 8, 2020

Residential Tenancy Branch