



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DORSET REALTY GROUP and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on June 3, 2021, wherein the Tenants sought to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

The hearing of the Tenants' Application was scheduled for 11:00 a.m. on October 1, 2021. Both parties called into the hearing. The Tenants, N.S. and R.A. called into the hearing, as did their translator, R.N. The Landlord's property manager, J.H. also called into the hearing. Those in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlord presented their evidence first.

In support of the Notice, the Property Manager testified as follows. She confirmed that the tenancy began October 1, 2016. Monthly rent is \$1,044.48 and the Tenants paid a \$475.00 security deposit.

The Landlord sought to end this tenancy due to the Tenant's son's actions; namely, the Property Manager stated that the Tenant's 30 year old son, broke into other tenants' mailboxes at the rental building and took their mail. This was recorded on the security camera footage; copies of the resulting videos were provided in evidence before me. The Property Manager stated that according to an email she received from the police officer involved, the Tenant's son has been charged with theft and is now "going through the court process".

The Property Manager noted that the Tenants sent an email to the Landlord wherein they apologized and took full responsibility for their son's behaviour. This email was also provided in evidence before me.

The Property manager also claimed that there is an ongoing risk of further crimes because the Tenants acknowledge that their son has drug issues. The Property Manager also stated that other Tenants have been scared of his behaviour.

The Property manager testified that the Notice was served on the Tenants by the caretaker, C.J. on May 25, 2021. The Tenant, N.S., acknowledged service of the Notice on that date. Neither party submitted a copy of the Notice in evidence before me.

In response to the Property Manager's testimony and submissions, the Tenant, R.A., testified as follows. She confirmed that her spouse, N.S., the other Tenant, was served with the Notice on May 25, 2021. She confirmed that it was their understanding that the Landlord wishes to end the tenancy because of R.A.'s son's, S.S., behaviour, and in particular his actions of breaking into other residents' mailboxes at the rental property.

R.A. immediately apologized for S.S.'s behaviour. She further stated said their son has a drug problem and was hallucinating at the time and believed that he was opening their mailbox. R.A. stated that S.S. was intending to go to rehab next Friday, October 8, 2021 or Monday, October 11, 2021 where he will stay for a period of three months. She also stated that their son is very upset about his parents being possibly evicted, wants to go to rehab to help with his addiction, and is very worried about his behaviour impacting his parents.

In terms of criminal proceedings, R.A. stated that their son's court date for the theft occurred some time ago and he was in jail from March to May 25, 2021 as he was sentenced to four months and was credited for time served.

In reply, the Property Manager confirmed that she did not receive any further communication from the police and was not aware he had served his time. She also stated that he is not remorseful, although she has not talked to him.

Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Act*. In this case the Landlord sought to end the tenancy for cause, due to the fact the Tenant's son broke into other tenant's mailboxes at the rental property.

The Tenants do not dispute the Landlord's allegations with respect to their son's behaviour. They acknowledge their son has issues and was affected by drugs at the time of the incident. R.A. began her testimony apologizing and taking full responsibility for their son's behaviour. They also note that their son has acknowledged his actions, admitted his fault, and has served time for this crime. They further testified that he was intending to attend a rehabilitation facility to deal with his drug issues.

Neither party submitted a copy of the Notice to End Tenancy for Cause in evidence before me; that said, both parties confirmed the reason the Landlord sought to end the tenancy was because of the Tenants' son's criminal activity.

I am satisfied, based on the evidence before me that the Tenant's son broke into the mailboxes belonging to other residents of the rental building. In doing so, I am satisfied the Tenants' son engaged in illegal activity. There was no evidence the Tenants themselves engaged in such activity, however they are responsible for their guests, including their son's behaviour. The Tenants did not dispute the Landlord's allegation; rather, they took full responsibility for their son's behaviour and apologized profusely during the hearing.

Based on the evidence before me, I am satisfied this was a one-time occurrence. I accept the Tenants' submissions that their son was affected by drugs at the time the crime occurred. In one video submitted by the Landlord, the extent of the Tenants' son's intoxication is apparent as he falls over from a squatting position. I also accept their testimony that their son is extremely remorseful for his actions, worried about the affect of his behaviour on his parents, and has committed to attending rehabilitation to address his drug use. I also note that the Tenants' son was sentenced to a period of incarceration for this incident and has served time for this crime.

The question before me is whether the tenancy should end for the above. While this is a serious crime and has undoubtedly adversely affected the security and well being of other occupants of the rental unit, I find this to be an isolated incident, which is unlikely to reoccur. I am also satisfied the Tenants and their son appreciate the seriousness of this incident and are taking remedial steps to ensure it never reoccurs. As such, while I find the Landlord had cause to issue the Notice, I am not satisfied this incident necessitates an ending of this tenancy.

The Tenants are reminded they are responsible for their son's behaviour and are, in essence, being given a second chance to prove to the Landlord that their tenancy should continue. Should the Tenants' son engage in any further disruptive behaviour, criminal or otherwise, the Landlord is at liberty to issue another 1 Month Notice to End Tenancy for Cause.

Conclusion

The Tenants' request for an Order canceling the Notice is granted. The tenancy shall end in accordance with the *Act*.

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: October 29, 2021

Residential Tenancy Branch