Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the "Act"), to cancel a One Month Notice to End Tenancy for Cause, (the "Notice") issued on April 4, 2022, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on November 18, 2017. Rent in the amount of $750.00 was payable on the 18th of each month. The tenants rent the basement suite on the side of the duplex the landlords own.

The parties agreed that the Notice was served on the tenant indicating that the tenants are required to vacate the rental unit on May 18, 2022.

The reason stated within the Notice was that the tenants have:

- significantly jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Breach of a material term of the tenancy agreement that was not corrected with a reasonable time after written notice to do so.

The landlords testified that over four years of the tenancy the tenants would gather and store items on the property, which all areas outside the rental unit is common property as this is a duplex. The landlord stated they would ask the tenant to clean up, and they would, but never totally. The landlords stated that the tenants would then start adding more junk to the piles.

The landlords testified that on September 19, 2018, they sent a message on Facebook to the female tenant that they were unhappy with all the items being stored on the property. Filed in evidence is a copy of the Facebook message

The landlords testified that on December 20, 2019, the tenants were again informed to move tires and other items from the parking area by text message and on March 15, 2020, the tenant had parked their snowmobile in the driveway. The landlords stated on March 16, 2020, they sent an email to the tenants that there would be a zero-tolerance policy on anything other than one passenger vehicle in the parking lot. This included no RVs, tires, rim, shovels, plywood, and skis. Filed in evidence is a copy of the email.

The landlords testified that on December 7, 2021, that they notice some articles in the driveway, totes, old snow blower and they discovered that the tenants had unsafely stored some antifreeze which potentially endangered their pets and pets of their neighbours. The landlords issued the Notice on April 4, 2022.

The landlords testified that even after the Notice the tenants continue to store junk on the property.

The landlords testified that the tenants said they know that they are not to store items in the common areas. The landlord stated that the tenants made no effort to make this better. The landlords stated they have tolerated the tenants' behaviour; however, enough is enough.

The tenants testified that they believe the issue of December 7, 2021, was resolved at the time. The tenants stated that they apologized to the landlords.

The male tenant stated they did not have a funnel at the time to property store the antifreeze. The tenant stated that they temporarily stored some antifreeze which they had covered, with a tarp, toboggan and some wood.

The male tenant stated that they are in the snow removal business and sometimes they have to remove items from their truck temporarily. The tenant stated that there was a snow blower outside for a few days as someone was coming to retrieve it.

The tenants testified that they have not breached a material term of the tenancy agreement. The tenants stated that they have never seen any strata rules. The tenants stated that when the landlords raises issues they try to address them.

The tenants testified that there is no evidence from any of the neighbours complaining, such as text messages and they believe they have a good relationship. The tenants stated the only neighbour that provided a text message was because the landlord was asking them information after they had already issued the Notice, trying to build a case against them. The tenant stated that this is hearsay and disagree with the text message.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing; I find that the landlords has not provided sufficient evidence to show that the tenants have:

- significantly jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Breach of a material term of the tenancy agreement that was not corrected with a reasonable time after written notice to do so.

In this case, the landlords identify three issues within the Notice, those are the only issues that are to be considered and must meet the reasons identified in the Notice as shown above.

The first identified issues is an email the landlords sent to the tenants on March 16, 2020, that there would be a zero-tolerance policy which in part states,

> "If you guys are going to stay here, there are going to be some hard and fast rules: …"
>
> [Reproduced as written]

I do not find that to be an issue for me to be considered. At most this simply supports that the landlords were placing rules upon the tenants.

The second identified issue was related to an incident that occurred on December 7, 2021. I accept that the male tenant was irresponsible when they stored antifreeze improperly, even though it was covered by a tarp and wood. However, that matter was rectified at the time and the tenants apologized. I find if the landlords truly believed at the time that the tenants have significantly jeopardized the health or safety or lawful right of another occupant or the landlord, that the landlords would have immediately issued the Notice. I find waiting to issue the Notice four (4) months later unreasonable. I find the tenants had the right to believe this matter was resolved after they removed the antifreeze and apologized.

The third identified issue was that "Our neighbours, who are co-owners of the property, have complained about the mess in our parking area, and the area in front of our rental unit suite".

However, I have no complaints or statements from any neighbours to support this. The text message from the landlord to the tenants dated December 7, 2021, the landlord states the following,

> "Not sure if I mentioned this, but a couple of years back I had to take a blast of shit from the neighbours regarding the piles of stuff you leave a round".
>
> [Reproduced as written]

I find the statement leads me to believe that no recent complaints were received.

The only text message the landlords identified from a neighbour is labelled "text image #5" dated May 4, 2022. I find this supports that the landlords were collecting evidence to build their case after the Notice was issued. This was not a complaint initiated by the neighbour before the Notice was issued.

I also note the response from the neighbour states the following,

> Ya, it got pretty junky there last summer…"
>
> [Reproduced as written]

I find I can put no weight on the text message because if the neighbour was truly concerned about the property last summer they would have notified the landlords at the time. Further, the tenants denied this allegation.

While I accept that there has been some previous issues between the parties regarding items being stored on the property; however, this is not a material term of the tenancy agreement. A material term is a term that the parties both agree to in the tenancy agreement at the start of the tenancy, that is so important that the most trivial breach of that term gives the other party the right to end the tenancy. I find there is no such clause in the tenancy agreement, or any strata rules agreed to by the tenants signing a form "K". Therefore, I find I cannot find a breach of a material term of the tenancy agreement.

While the tenancy agreement does not check off storage as included in the rent; however, clearly some storage has been allowed by the landlords during the course of the tenancy. As an example, the landlords text message of December 20, 2019, asking the tenants to move their tires and timbers due to concerns that they could be hit by the snow blower and informed the tenants "you can just stashed them under the stairs for now…". If this was a material term of the tenancy agreement the landlord would have told the tenants that they must immediately removed these items from the property, not suggest a temporary storage solution on the property.

Further, the email the landlords sent the tenants on April 4, 2022, is informing the tenants that they wanted to end the tenancy when they discovered the antifreeze on December 7, 2021; but decided to wait for the winter season to be over so the tenants could get through their work season without any upheaval. I find this to be an unreasonable delay and would not support the reasons stated within the Notice as the landlord has a duty to issue the Notice at the time the incidents occurred or within a reasonable time. Not four months later.

I find the evidence does not support the Notice was issued for the reasons stated within the Notice. Therefore, I grant the tenants' application to cancel the Notice. The tenancy will continue under the Act .

As the tenants were successful with their application, I find the tenants are entitled to recover the cost of the filing fee. I authorize the tenants a onetime rent reduction in the amount of $100.00 from a future rent payable to the landlords to recover the cost of the filing fee.

While I noted in the hearing, that I would make some orders against the tenants if the tenancy continued. However, I find after reviewing the testimony and evidence that would be inappropriate at this time.

Conclusion

The tenants' application to cancel the Notice, 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 03, 2022

Residential Tenancy Branch