

## **DECISION**

Dispute Codes            CNC, CNL, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel the One month Notice to End Tenancy for Cause and to cancel the Two Month Notice to End Tenancy for the landlords' use of the property. The tenants also seek to recover the filing fee.

The tenant served the landlord by registered mail on April 30, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing. Both Parties confirm receipt of the other Parties evidence.

The male tenant and the landlord appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Are the tenants entitled to cancel the One Month Notice to End Tenancy?
- Are the tenants entitled to cancel the Two Month Notice to End Tenancy?

### Background and Evidence

This tenancy started on July 15, 2006. This is a month to month tenancy and rent for this unit is \$1,762.00 per month due on the first of each month. The tenants paid a security deposit of \$850 on July 15, 2006.

The landlord testifies that he served the tenants with a One month Notice to End Tenancy for cause on April 29, 2010. The reasons given on this notice are that the tenants are repeatedly late paying rent; the tenants or a person permitted on the property by the tenants has put the

landlords' property at significant risk and the tenants have caused extraordinary damage to the unit/site or property.

The landlord testifies that the tenants did not pay their rent for June, 2008 until March 23, 2010. The landlord claims the tenants did not pay rent for January, February and March, 2010 until March 23, 2010. The landlord has provided copies of the cheques for these months

The landlord testifies that he had a verbal agreement with the tenants that they must not have pets at the rental unit. The landlord claims on the first occasion he saw the tenant with a wet dog outside the unit and the tenants told him that it was not their dog and they were just babysitting it for the weekend for a friend. The landlord states that he explained again to the tenants that they were not to keep dogs in the unit and he gave them another chance.

The landlord states that he found dog waste in the dumpster and dog tracks leading to the tenant's door in the snow. On the second occasion the landlord claims he went to the tenants unit to collect rent and heard a dog barking in the garage. The tenant brought the dog out to show the landlord and explained that his father had died and his father in law as ill in hospital. The landlord claims the tenant told him it was his mother in laws dog and he was looking after it while she had gone out to dinner. The landlord claims the tenant went on to tell him that it was a very clean dog and had caused no damage. However, the landlord states he then saw the dog droll onto the carpet.

The landlord testifies that the tenants have put his property at significant risk by placing their Bar-B-Que on the top deck which is made from wood and vinyl. The landlord states that he has concerns about this damaging his property as it has a propane tank. The landlord also testifies that the tenant has caused extraordinary damage to the property when he cut branches from two fir trees on the property. The landlord claims that this caused the trees to lean into the neighbours' power lines and then his neighbour cut the other branches off the trees on the other side. The landlord states the branches will not grow back and he has had to take the trees down. The landlord has provided photographic evidence showing the trees.

The tenant attending disputes the landlords claims. The tenant testifies that they pay their rent by cheque however the landlord often takes many months to cash these cheques and as a result the landlord confronted the tenant about non payment of rent for three months in 2009.

The tenant claimed he checked with his bank and found these payments to have been made. The tenant agrees that they were late paying rent in January, February and March, 2010 due to family emergencies he was away and did not pay his rent until March 23, 2010. The tenant states that this was not an issue at the time and only became an issue after he argued with the landlord in March, 2010 about the alleged unpaid rent for 2009. The landlord did not inform them about the unpaid rent in January, 2010 so they could have rectified it at the time.

The tenant testifies that he did have a friend's dog with him outside the rental unit and the dog was wet as they had just been to the dog beach for a walk. The dog was on the deck and not in the house. On the second occasion he did have his mother in laws dog visiting. The tenant claims this dog visited on approximately six occasions due to family emergencies. The dog did not cause any damage to the rental unit and did not live at the rental unit. The tenant states that the verbal agreement he had with the landlord about no pets was for ownership of a pet, nothing was said about dogs visiting the rental unit.

The tenant testifies that he moved his Bar-B-Que to the top deck in the fall and it was not used during the winter months. He claims that after the landlord notified him about his concerns with the Bar-B-Que and the propane tank the tenant removed the tank. The tenant states that no damage has been caused by the Bar-B-Que.

The tenant claims he cut only three branches from the fir trees as they were hanging on the power lines to the rental unit. The tenant claims he notified the landlord who thanked him for doing this. The tenant claims that by removing three branches this would not have caused the tree to lean into the neighbours' power lines.

The landlord testifies that he served the tenants with a Two Month Notice to End Tenancy for landlords' use of the property. The landlord testifies that it is his intention to end this tenancy and he may close up the property, sell it or move into it. The landlord states the rental property is newer then his own home and he may sell his home and then move into the rental property.

The tenant disputes the landlords' reasons given on the Two Month Notice. The tenant states the landlord served this notice with no valid reason and has concerns about his intention to move into the unit

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; With regard to the landlords reasons given on the One Month Notice to End Tenancy; I find the tenants did pay rent late for the first three months of 2010, however, the landlord did not pursue this with the tenants and the landlord has not proven that the tenants are repeatedly late paying rent throughout the length of their tenancy throughout 2009. The landlord also claims the tenants owed rent from June, 2008 and did not pay this until March 23, 2010; however, this does not constitute repeatedly late rent payments. I would suggest the tenants pay rent on the first of each month by posted cheques in the future.

With regard to the landlords second reason given on the Notice that the tenants have kept a dog which may have caused damage to the unit; I find there is no evidence to support the landlords claim that the tenants own a dog or keep a dog for extended periods at the rental unit. There is no written tenancy agreement in place that states a tenant must not have a dog or that dogs are not allowed to visit tenants in their rental unit. While I accept that the landlord does not want dogs in the unit and a verbal agreement was in place not to have pets, there is no evidence to suggest that the dogs who have visited the unit have caused any damage to the unit.

With regards to the third reason given on the Notice, I find the burden of proof lies with the landlord to provide sufficient evidence that the tenants have caused extraordinary damage to the unit, site or property. The landlord claims that the tenants have moved their Bar-B-Que to the top deck but has not shown how this action has caused any damage to the property and the tenant has since removed the propane tank from the Bar-B-Que on the landlords' advice. The tenant admits he did cut three branches from the fir trees however, the landlord has not provided sufficient evidence to show that this action severely damaged the trees to the extent that they started to lean onto the neighbors power lines.

Consequently, I find the landlord has not provided sufficient evidence to support the reasons given on the One Month Notice to End Tenancy and this Notice is cancelled.

With regard to the Two Month Notice to End Tenancy for the landlords use of the property; Due to the landlords testimony I have reached the conclusion that this Notice was issued to end the tenancy in the event that the first Notice was cancelled and I call into question the landlords

good faith in issuing this Notice. The landlord testifies that he may move into the property or sell it or leave it empty until he sells his own house. None of these reasons are valid enough in order for the Two Month Notice to be upheld. The reason given on the Notice is that the landlord or the landlords spouse or close family member of the landlord or the landlords spouse intend to occupy the rental unit. As the landlord has not provided evidence to support this reason the Two Month Notice is also cancelled and the tenancy may continue at this time.

### Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated April 29, 2010 is cancelled and the Two Month Notice to End Tenancy for the landlords use of the property dated April 30, 2010 is cancelled and the tenancy will continue.

As the tenants have been successful in setting aside the Notices, I find they are entitled to recover their \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: June 16, 2010.

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Dispute Resolution Officer