



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant's agent (the agent) confirmed that one of the landlord's representatives handed the tenant the 1 Month Notice on February 7, 2012. The landlord's representative (the landlord) confirmed that the landlord received a copy of the tenant's dispute resolution hearing package left in the landlord's mail box on February 10, 2012. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

At the hearing, the landlord requested an end to this tenancy and an Order of Possession if the tenant's application to cancel the 1 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should an order or orders be issued to the landlord?

Background and Evidence

This periodic tenancy commenced at some point in 2009. Monthly rent is currently set at \$375.00, payable on the first.

The landlord gave oral testimony that the tenant has been given repeated verbal and written warnings regarding excessive noise that interferes with and unreasonably disturbs other occupants and the landlord. Although he testified that written warnings were issued to the tenant on July 22, 2011 and February 3, 2012, he did not enter

copies of these warnings into written evidence. He also said that the landlord has received written complaints from other tenants regarding the tenant's noisy behaviour, including his use of a blow horn in the rental property. Again, the landlord did not enter copies of these letters into written evidence. The landlord also described an incident that occurred on February 3, 2012, when the tenant became very agitated and aggressive when the landlord spoke to him about the noise he was causing. He said that the tenant was very loud and screamed at him in the lobby. He testified that the tenant only quieted down and returned to his room when the landlord said that he would have to call the police if the tenant did not co-operate.

The agent said that the tenant was uncertain as to why the landlord had issued the 1 Month Notice. She said that he believed that this resulted from his ongoing requests to have his sink repaired. She asked that if the tenancy were to continue that the landlord repair the sink.

The landlord testified that one of his employees had attempted to repair the sink, but the tenant's verbal abuse had prompted that employee to leave the rental unit and refuse to return. The landlord said that he would repair the sink himself if the tenant would let him enter the rental unit and let him do this work without causing problems while he did this work.

Analysis

The landlord entered into written evidence a copy of the 1 Month Notice, requiring the tenant to end this tenancy by April 1, 2012. In that Notice, the landlord cited the following reason for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

When a landlord issues such a notice and the tenant disputes the notice, the onus is on the landlord to prove cause for issuing the notice.

Although the landlord gave oral testimony regarding the tenant's actions, the landlord has failed to provide copies of the written notices or warnings to the tenant with respect to his behaviour in which the tenant was advised of the potential consequences that could arise if he did not modify his behaviour. Similarly, although the landlord said that he had received letters of complaint from other tenants, he did not enter into written evidence copies of those letters. The landlord did not call any witnesses to confirm his accounts of the tenant's interference with and unreasonable disturbance of other

occupants of the tenant's building or the landlord. He testified that the tenant did not make any specific threats against anyone and the police have never been called to respond to complaints about the tenant's actions. The only evidence claiming that the tenant has interfered with other occupants or the landlord comes from the landlord's representative who attended this hearing.

For the above reasons I find there was insufficient evidence from the landlord to allow me to find that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Under these circumstances, I find that the landlord has failed to demonstrate that there were sufficient grounds for issuing the 1 Month Notice.

At the hearing, the landlord testified that he realized that the tenant's sink needed repairs, but the landlord had been unable to conduct these repairs due to the tenant's behaviours. He said that he would personally attend the tenant's rental unit to conduct these repairs if the tenant were willing to co-operate with his efforts to repair the sink. He said that he would make arrangements to conduct these repairs, likely on the day following the hearing.

Although the landlord has committed to conduct the requested repairs as soon as possible, I include in my decision an order that the landlord conduct these repairs by 5:00 p.m. on Monday, February 27, 2012. If that does not occur, I order the tenant to reduce his rent by \$25.00 per month commencing on March 1, 2012, until such time as the sink repairs have been completed. Once the sink repairs have been completed, the tenant's rent will revert to the original amount as was due for February 2012 and as established in the tenancy agreement between the parties.

Conclusion

The tenant's application is allowed. The 1 Month Notice is set aside with the effect that this tenancy shall continue. As the tenant's application was successful, there is no need to consider the landlord's oral request for an Order of Possession.

I order the landlord to conduct repairs on the tenant's sink by 5:00 p.m. on February 27, 2012. If that does not occur, I order the tenant to reduce his monthly rent by \$25.00 per month commencing on March 1, 2012, until such time as the sink repairs have been completed. The tenant's rent will revert to the original amount as set out in the tenancy agreement once the repairs have been completed.

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: February 24, 2012

Residential Tenancy Branch