



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR
CNC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord filed their application for dispute resolution on January 09, 2013 seeking an Order of Possession for Cause.

The Tenants filed their application for dispute resolution on December 21, 2012, seeking to cancel a Notice to end tenancy issued for cause and to recover the cost of the filing fee for their application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Notice to end tenancy issued December 14, 2012 be upheld or cancelled?
2. If upheld, should the Landlord be awarded an Order of Possession?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a 1 month Notice to end tenancy for cause dated December 14, 2012; their written statement; witness statements; a warning letter issued to the Tenants November 27, 2012; and a notice of entry for December 11, 2012.

The Tenants confirmed receipt of the Landlord's evidence. Upon review of the evidence received from the Tenants the Tenants affirmed that they did not send a package of evidence to the Landlord and noted that the Landlord would have been sent copies of their evidence documents individually prior to the applications for dispute resolution being filed. I explained that I could not consider the Tenants' evidence as it was not served to the Landlord as evidence.

The Landlord advised that her written submission outlines the reasons for issuing the Notice to end tenancy. She stated she would summarize her submission during this proceeding. She indicated that she has been resident manager since November 15, 2003 and that Tenant S.C. had previously been employed by the Landlord but was let go in 2009. Since that time she says she has experienced negative behaviors from S.C. which include S.C. refusing to speak to her.

The Landlord stated that she had witnessed S.C. slamming the washing machine lids on several occasions but felt she could not say anything about it until she had a witness because of the way S.C. acted towards her. There had also been an issue with chewing gum being stuck to the elevator rail on the Tenants' floor. So when another tenant complained about S.C. slamming the washers she promptly issued the Tenants a written notice about abusing the Landlord's property and gum being stuck to the elevator. She noted that since issuing this letter there had not been gum on the elevator. She also mentioned incidents where S.C. drives excessively fast in the parking area which she believes is an attempt by S.C. to scare the Landlord and other tenants. No written warnings have been issued to the Tenants for driving concerns. The Landlord stated that she has attempted to resolve the issues by speaking with S.C.'s husband because S.C. refuses to speak to her.

The Landlord advised that On December 11, 2012, she had to conduct a pest control inspection on several units so she posted proper notice of entry and attended the Tenants unit with the pest control company. S.C. answered the door while she was talking on the phone. S.C. continued the telephone conversation and continued to walk around the Landlord preventing her from accompanying the pest control person. S.C. was speaking in another language, which the Landlord understands. The Landlord

heard S.C. begin to say inappropriate things about her into the telephone which caused the Landlord to become upset. At that time the Landlord said she told the pest control person that they needed to leave as the Tenant was talking inappropriately. She told the pest control person what was being said by S.C. and he agreed that they needed to leave.

The Landlord advised that after discussing S.C.'s past behaviors and these recent situations with her senior property manager she was instructed to issue the Tenants the 1 Month Notice. She noted how the Tenant has breached sections 29 and 19 of the tenancy agreement relating to damaging the Landlord's property and inappropriate conduct.

In response to the Landlord's submission S.C. stated that her conversation with her mother was in her opinion private. I asked her directly if she said the things the Landlord said she heard to which she repeated, "my conversation was private". I asked her a second time and she said she did not keep a record of her conversation. I asked a third time to which she said she could not remember. She denied slamming the washing machine doors and denied anything to do with gum on the elevator or driving too fast in the parking area.

G.C. affirmed that the Landlord has approached him to speak about his wife which he found insulting. He felt the Landlord was acting inappropriately as she said she had heard his wife's conversations by listening through their apartment door so he asked her to leave. He claims the Landlord has not approached him prior to November 2012 to speak about his wife's behaviour.

After a brief discussion the Tenants confirmed they understood that if the Landlord verifies that they are mistreating Landlord's property, acting inappropriately towards the Resident Manager or any agent of the Landlord, or driving aggressively in the parking area, in the future, the record of these events and this decision would form part of the Landlord's case for eviction should it again come before an Arbitrator for consideration.

Analysis

The Tenants confirmed that they did not provide the Landlord with copies of their evidence package in contravention of sections 3.1 and 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlord has not received copies of the Tenants' evidence I

find that the Tenants' evidence cannot be considered in my decision. I did however consider the Tenants' testimony.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenants in a manner that complies with section 89 of the Act.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Put the Landlord's property at significant risk
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

The Landlord provided testimony that she attempted to deal with S.C.'s inappropriate behavior initially by avoiding her and speaking with her husband, G. C. When another tenant began to complain she issued one written warning on November 27, 2012 relating to slamming of the washing machine doors and gum in the elevator. A few weeks later the Landlord overheard the Tenant speak inappropriately about her while on the telephone which caused the issuance of the Notice.

Section 47 1) (h) of the Act provides that the Landlord may end a tenancy by giving notice to end the tenancy if the tenant has not corrected the situation within a reasonable time after the landlord gives the tenant written notice to do so.

While I accept the Landlord's submission about what S.C. said, I note that the Tenant had never been issued a written notice to correct her inappropriate behaviour or her aggressive driving. Therefore, I find that this decision is to be considered a written warning to the Tenants about inappropriate behaviour towards the Landlord and driving.

Based on the aforementioned I find that the Landlord has not succeeded in meeting the burden of proof for issuing the 1 Month Notice to End Tenancy issued on December 14, 2012, and I therefore cancel the Notice.

As noted above, if the Landlord verifies that the Tenant(s) are mistreating Landlord's property, acting inappropriately towards the Resident Manager or any agent of the Landlord, or driving aggressively in the parking area, in the future, the record of these events and this decision would form part of the Landlord's case for eviction should it again come before a dispute resolution officer for consideration.

Upon consideration of the circumstances before me, I decline to award the Tenants recovery of their filing fee.

Conclusion

The 1 Month Notice to End Tenancy, issued December 12, 2012, is HEREBY CANCELLED and is of no force or effect.

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: January 24, 2013

Residential Tenancy Branch

