



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, CNL, MNDC, OLC, ERP, RP, LRE, FF

Introduction

This hearing was convened by way of conference call in response to the tenants application to cancel a 10 Day Notice to End Tenancy for unpaid rent; to cancel a One Month Notice to End Tenancy for cause; to cancel a Two Month Notice to End Tenancy for landlords use of the property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order for the landlord to make emergency repairs for health or safety reasons, for an Order for the landlord to make repairs to the unit, site or property; to suspend or set conditions on the landlords right to enter the rental unit; and to recover the filing fee from the landlord for the cost of this application. At the outset of the hearing the tenants testify that as the rent was paid within the five days following service of the 10 Day Notice this renders the 10 Day Notice cancelled and the tenants therefore withdraw their application to set aside this Notice.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenants’ application to cancel the One Month Notice and the Two Month Notice, and I dismiss the remaining claims with liberty to re-apply.

Issue(s) to be Decided

- Are the tenants entitled to have the One Month Notice to End Tenancy for cause set aside?
- Are the tenants entitled to have the Two Month Notice to End Tenancy for landlord’s use of the property set aside?

Background and Evidence

The parties agree that this month to month tenancy started on April 01, 2012. Rent for this basement unit is \$1,200.00 per month and is due on the first day of each month.

The landlord testifies that the tenants were served with a Two Month Notice to End Tenancy on May 11, 2013 in person. This Notice informed the tenants that the landlord or a close family member of the landlord will occupy the rental unit. The Notice has an effective date of June 30, 2013. The landlord testifies that the landlord’s son will be coming to live in the landlord’s home and the landlord seeks to incorporate the basement unit into the landlord’s home therefore affording them more space.

The tenant VH testifies that the date of the Notice is wrong. The Notice should have an effective date of July 31, 2013 and this is why the tenants have applied to set aside this Notice.

The landlord testifies that the tenants were served with a One Month Notice to End Tenancy on May 23, 2013 in person. This Notice has an effective date of June 30, 2013 and gives the following reason to end the tenancy:

- 1) The tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) Put the landlord's property at significant risk;

The landlord testifies that the tenants play loud music late at night and have had dogs and two puppies which bark continually throughout the day. The landlord testifies that on one occasion the tenant was so loud late at night that the landlord called the police to speak to the tenants. When the police came at 12.40 a.m. the noise had subsided so the police did not speak to the tenants at that time but told the landlord to call them back if the noise continued. The landlord testifies that the noise did continue after the police left and at 2.30 a.m. the police were called again and attended the unit and spoke to the tenant. The landlord has provided a police file number in evidence.

The landlord testifies that the tenants ran an extension cable from the outside outlet used for the septic tank to their RV to charge their RV; this resulted in the outlet becoming damaged when the breakers blew. The landlord testifies that the tenants had been warned about not using this outlet to plug anything else in. The landlord testifies that as the breakers blew, the septic pump stopped working and the tenants' toilet

backed up. The landlord had to call a repairman to fix the problem and the outlet would not work so the pump had to be plugged in on the landlord's deck.

The landlord testifies that the tenants were verbally warned not to plug in their RV to charge however later the landlord and a friend of the landlords saw an extension lead running from the tenants' kitchen window to the RV. The landlord testifies that they knocked on the tenant's door but were told the female tenant was napping so they approached the RV to speak to the male tenant. The landlord testifies that the male tenant became intimidating and threatening towards the landlord and the landlord's friend.

The landlord testifies that the tenant used another extension cord to plug their RV in for a third time. The landlord testifies that the female tenant sent the landlord harassing and threatening text messages a copy of which the tenant has provided in evidence. The landlord testifies that prior to the tenants plugging in the RV the landlord did not have any electrical problems in the property. The landlord testifies that this action has put the landlords property at significant risk.

The landlord testifies that the tenants have put the landlord's property at significant liability risk due to the tenants and the tenants' children riding a dirt bike both on the landlords and the neighbour's property and on the streets without insurance. The landlord testifies that she had received complaints from neighbouring farmers where the tenants have ridden this dirt bike into their property causing damage to the fruit crops. The landlord testifies that this has added to the noise and the stress levels for the landlord and the landlord's children.

The tenants dispute the landlord's claims. The tenant VH testifies that the landlord first served the tenants with a Two Month Notice with the wrong date. The tenants were willing to move out and explained to the landlord that the landlord would have to pay the tenants compensation of one month's rent. The tenant testifies that the landlord was not aware of this compensation and got upset saying the landlord had many reasons to

evict the tenants sooner and then served the tenants with a One Month Notice. The tenant testifies that they believe this was served to avoid paying the tenants compensation as the landlord had not raised any issues with the tenants prior to the Notices being issued.

The tenant testifies that they have five children and only play music on the laptop speakers which do not go very loud. The night the landlord called the police the tenant testifies that they had a friend at the unit who also had children. The children were all in bed and the tenant was sitting with a friend listening to the music on the laptop. The police came round and spoke to the tenant about noise and the tenant explained that they were not listening to loud music. The tenant testifies that a friend of the landlord did mention to the tenants about loud noise from the tenants puppies but this was only in the day when the tenants were not home. The tenant testifies that the puppies were quiet in the evening when the tenants were home however the tenants have now got rid of the puppies. The tenant testifies the landlord never informed the tenant that the noise from the puppies was disturbing the landlord for the landlord's family.

The tenant testifies that the landlord had informed the female tenant that the tenants must not plug anything into the outside outlet for the Septic tank. The tenant testifies that she forgot to tell her husband this and when she saw her husband had plugged in an extension cord the tenant went outside and removed it. The tenant testifies that this extension was not charging the RV it was simply running a small TV in the RV. On April 10, 2013 the tenant testifies that the toilet was not flushing correctly and the tenant sent the landlord a text message. The landlord sent round a handyman who came to the unit on April 11, 2013. The handyman informed the tenant that the TV had tripped the breaker due to it being plugged into the same outlet as the pump. The tenant disputes the landlord's allegations that they then plugged the RV into a different outlet in their unit. An extension cord was plugged into a kitchen outlet but this was for the pressure washer to wash the patio.

The tenant testifies that on May 11 they noticed that the toilet was not flushing again. The tenant testifies that there had been electrical issues in the house previously with outlets tripping the breakers. The tenant testifies she sent the landlord another text message however the toilet just started to work again. The tenant testifies that when the landlord confronted the tenant's husband about having the RV plugged in again the landlord confronted the tenant's husband knowing her husband does not understand English very well. The tenant denies that her husband was aggressive or threatening and it was just a misunderstanding because the RV was not plugged in.

The tenant testifies that they have recently purchased a dirt bike from a friend and have never ridden it on the landlord's property. The tenant testifies that the bike is ridden on neighboring farm land. When it comes home it is turned off, rolled in and stored under the deck.

The landlord calls her first witness CS. CS testifies that she was with the landlord when they saw an extension lead coming from the tenants' kitchen to the RV. CS testifies that they first went to the tenants' door and were informed the tenant was taking a nap. They then approached the male tenant in the RV. The landlord asked the male tenant to unplug the extension lead from the RV. The tenant went around the RV and unplugged it tossing the cord. CS testifies that they told the tenant that this was blowing the breakers in the house. CS testifies that the tenant told CS to mind her own business and then started to demand money back and free rent. CS testifies that the tenant was aggressively slapping his fist into his other hand and threatened to sue the landlord in court. CS testifies that they had no problem understanding the male tenants English but the male tenant was bullying and tried to intimidate the landlord. CS testifies that they both backed away and went to CS's home and CS wrote out a statement and then the landlord called the police to report the incident.

CS testifies that she witnessed the tenants riding the dirt bike on the landlords property. CS testifies that the male tenant and a female guest were also observed by CS smoking an illegal substance. CS testifies that the noise is often unbearable in the landlords

home. The bass can be heard along with the tenants children yelling, screaming and slamming doors. On one occasion CS testifies that the tenants other dog went after CS and was vicious. CS testifies that the tenants' dogs are very noisy.

The landlord calls her second witness RS. RS testifies that he has observed noise and disturbances from the tenants' dogs and one dog used to bite at people's ankles until the tenants would pull it away. The noise travels up into the landlords unit and on occasion it is so loud they can't hear the television. RS testifies that he is the landlord's handyman and attended the unit to look at the tenants' toilet. RS testifies that he had informed the tenant about the noisy dogs during the day and the tenant said she was not aware of this and the dogs were always quiet when the tenant got home from work. RS testifies that he told the tenant the noise was unbearable while she was at work. RS testifies that he has also observed loud music on many occasions from the tenants unit and the landlord has always been very tolerant of this but often it is blaring out at midnight.

RS testifies that on the day the landlord and RS's wife approached the RV to speak to the male tenant, RS was doing some work outside about 100 yards away. RS testifies that although he could not hear the conversation it was very loud the male tenant was visibly angry slamming his fist into his other hand and making strong gestures. RS testifies that he was about to go over to the landlord but the landlord and RS's wife started to walk away from the tenant.

RS testifies that prior to the tenants moving in RS had completed a lot of work in the tenants' bathroom. RS testifies that if the septic tank backs up and overflows into this bathroom it will cause a lot of damage. RS testifies that he remembers the landlord informing the tenant not to use this outside outlet and when he spoke to the tenant about it the tenant informed RS that the RV had been plugged into the outlet.

The tenant cross examines this witness and asks the witness if the witness saw any breakers switched off. The witness replies that yes he did witness a couple of breakers

switched off. The tenant asks the witness if the witness saw the breakers off in the kitchen. The witness responds that yes one had tripped.

The landlord asks the witness if the witness had seen the tenants on a dirt bike. The witness responds that on Saturday and Sunday he witnessed a number of people riding the dirt bike on the landlord's property and the witness testifies that he took a video of this.

At the hearing the landlord requests that the One Month Notice is upheld and seeks an Order of Possession for June 30, 2013. The landlord also requests that the Two Month Notice is upheld.

The tenant requests that both Notices are cancelled. The tenant refers the Arbitrator to the tenants witness statements provided in documentary evidence and asks the Arbitrator to take account of these.

The parties presented other evidence that was not relevant to my decision in the matters being heard today. I looked at the evidence that was relevant and based my decision on this.

Analysis

I have carefully considered all the relevant evidence before me, including the sworn testimony of both parties and witnesses. I will deal with the One Month Notice in my decision first. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have reviewed the evidence and considered both parties verbal testimony and the testimony of the landlord's witnesses. From this evidence and testimony it is my decision that the tenants have disturbed the landlord with loud music and barking dogs on more than one occasion. I also find from the evidence before me that the male tenant did act in an intimidating and aggressive way towards the landlord when the landlord and the landlords witness approached the male tenant about the extension cord. This behavior was also witnessed by the second witness from a distance. However the landlord has not put in place a written warning prior to issuing the tenant with a One Month Notice to give the tenants the opportunity to rectify this behavior.

I have considered the arguments put forth concerning the tenants jeopardizing the health, safety or lawful interests of the landlord and find I have insufficient evidence before me that the tenants have seriously jeopardized the health, safety or lawful interest of the landlord. If these situations were so serious prior to the landlord issuing the tenants with the notice to end tenancy then the landlord should have given the tenant a written breach letter outlining the breaches that the landlord believed were occurring.

I have also considered the arguments put forth concerning the landlords reason given that the tenants have put the landlords property at significant risk. The landlord argues that the male tenant was plugging in an extension cord to charge the tenants RV. This caused the breakers to trip on the septic pump which could potential have resulted in damage to the septic system and possible spillage into the tenants bathroom. The tenants contradict the landlord's testimony and that of the landlords witness and argue that the tenants were not charging the RV but were simply running a television in the RV. The tenants also argue that the electrical system had prior problems which were not rectified and the landlord agrees that the system is 31 years old. Without any further corroborating evidence to show that the tenants were deliberately negligent in plugging in this extension cord that tripped the breakers or of any damage to the landlords property other than the breakers tripping I must also find the landlord has insufficient proof to show these breakers continued to trip due to the tenants actions or neglect.

The landlord has also failed to meet the burden of proof that the tenants' dirt bike has caused any damage to the landlord's property. If damage has been caused to a neighbor's property then that neighbor is at liberty to file a complaint with the police and it is not a matter for the Residential Tenancy Office. Consequently the One Month Notice to End Tenancy for cause is set aside and the tenancy will continue at this time.

In regard to the Two Month Notice to End Tenancy for the landlords use of the property; the landlord has testified that the rental unit will be incorporated into the landlords home to accommodate the landlords son moving into the home. The tenants do not dispute this reason and only dispute the effective date of the Notice.

When a Notice is served such as this it must give the tenants two clear months to end the tenancy. As the Notice was served on May 11, 2013 the Notice would not be effective until July 31, 2013. This Date has now been amended on the Notice pursuant to s. 53 of the *Act*. Therefore I uphold the Two Month Notice issued on May 11, 2013. As the landlord has orally requested an Order of Possession at the hearing and the tenants application to cancel the Notice is dismissed I find the landlord is entitled to an Order of Possession for the amended date of the Notice of July 31, 2013. The landlord must therefore comply with the Residential Tenancy Act s. 51(1) regarding compensation to the tenants for this Notice.

As the tenants have only been successful in part I find the tenants must bear the cost of filing their own application.

Conclusion

The tenants' application is allowed in part. The one Month Notice to End Tenancy for Cause dated, May 23, 2013 is cancelled and the tenancy will continue at this time.

The tenants' application to cancel the Two Month Notice to End Tenancy dated May 11, 2013 is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on July 31, 2013. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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 18, 2013

Residential Tenancy Branch