



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF / OPC

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 1 month notice to end tenancy for cause, and recovery of the filing fee. Both parties attended and gave affirmed testimony. During the hearing the landlord's agent confirmed that the landlord seeks an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Preliminary Matter(s)

At the outset of the hearing the landlord's daughter / agent (the "agent") requested a face-to-face hearing. The agent stated that this preference had earlier been communicated to Branch staff who instructed her to address the matter with the Arbitrator. The landlord submitted documentary evidence which was received by the Branch on April 11, 2014. As to a face-to-face hearing, in the submission the landlord states in part:

The Landlord requests an in-person RTB hearing in lieu of the telephone hearing scheduled for April 23, 2014 at 11:30 am. This is especially important as the Tenant-Applicant's claim is fraudulent and, as the accuser, [tenant's name] should have to face the Landlord and/or the Landlord's representative while she is misrepresenting the truth.

An in-person hearing is requested, in addition, due to the fact that the Tenant-Applicant, in general, appears not to know or understand. And, it is requested, specifically, because [the tenant] insidiously implies, on the second page of her Claim "Attachment" Statement, that she does not understand the Landlord.

In the DEFINITIONS portion of the Dispute Resolution Rules of Procedure (the “Rules”) under the heading, “Dispute resolution proceeding,” it is stated in part as follows:

At the discretion of the Director, a dispute resolution proceeding may be conducted in-person, or conference call, or by written submissions.

RULE 1.2 speaks to the Objective of the Rules of Procedure:

The objective of the Rules of Procedure is to ensure a consistent, efficient and just process for resolving disputes.

Having considered the reasons identified in support of the request for a face-to-face hearing, the request was declined. Specifically, I was not persuaded that the rights of either party would be prejudiced by proceeding with the telephone conference call hearing. Further, I considered that an adjournment related to rescheduling of the hearing would lead to an unreasonable delay in either resolving or deciding the dispute.

Background and Evidence

The unit which is the subject of this dispute is located in a house situated within a residential neighbourhood. The landlord resides in a separate portion of the house.

Pursuant to a written tenancy agreement, tenancy began on July 01, 2009. Ownership of the property changed hands in 2012, and the first rent payment collected by the current landlord was for November 2012. Monthly rent is due and payable in advance on the first day of each month. Presently, the monthly rent is \$1,460.20. A security deposit of \$700.00 was collected near the start of tenancy.

Pursuant to section 47 of the Act which speaks to **Landlord’s notice: cause**, the landlord issued a 1 month notice to end tenancy (the “notice”) dated February 19, 2014. The agent testified that the notice was served by way delivery to the tenant’s mailbox on February 19, 2014. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 31, 2014. Reasons identified on the notice in support of its issuance are as follows:

Tenant has allowed an unreasonable number of occupants in the unit / site

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

significantly interfered with or unreasonably disturbed another occupant or the landlord

put the landlord's property at significant risk

Pursuant to section 90 of the Act which addresses **When documents are considered to have been received**, I find that the notice was received on February 22, 2014, or 3 days after being delivered to the tenant's mailbox on February 19, 2014.

Pursuant to section 47(4) of the Act, a tenant may dispute a notice by filing an application for dispute resolution within 10 days after receiving the notice. In the circumstances of his dispute, I find that the 10th day is March 04, 2014. The Branch date stamp affixed to the tenant's application shows March 02, 2014, which is a Sunday. I find that the date shown by way of the date stamp reflects an administrative error and, on a balance of probabilities, I find that the tenant's application was actually filed on Monday, March 03, 2014. In the result, I find that the tenant's application to dispute the notice was filed within the 10 day statutory time frame permitted.

The principal events leading to the landlord's issuance of the notice include a party given at the unit by the tenant's son in June 2013, another party in December 2013, and an incident involving "an unknown male and a bicycle that the latter slammed into the house wall by the Landlord's rear kitchen bay window" on February 07, 2014 (described in the landlord's submission as "Trespass Part 1"), and retrieval of the bicycle on February 08, 2014 (described in the landlord's submission as "Trespass Part 2").

As to the first party, the landlord's documentary submission describes, in part:

a total disturbance – large groups of people over-ran both the interior and the exterior of the rental property, including parts of the Landlord's side of the property such as the front lawn, the backyard and the garage rooftop, from which these individuals also erected a tarp onto the arbour of the adjacent open-air parking stall. Large landscaping rocks were also placed on top of the garage roof to hold the tarp in place.

The agent claims there was a verbal agreement between the landlord and the tenant following the above party, pursuant to which the tenant agreed to vacate the unit if there was ever such a similar event in future.

In relation to the second party the landlord's documentary submission variously describes "very loud music," "feral yelling and grunting," "hitting of the balcony with

some object(s) followed by repeated and very loud mucous-filled spitting,” “frequent, very loud, sometimes angry and swearing/ranting male voices shouting into the night air accompanied at different intervals by the screaming, higher pitched voices of females,” and so on. Subsequent to the second party the tenant’s son wrote the landlord a letter of apology, which was posted on the landlord’s front door on December 23, 2013.

As to the landlord’s actions following the second party, in the landlord’s written submission it is stated in part as follows:

The Landlord chose not to pursue this matter (Party 2) during the Christmas holidays. The Landlord waited for the Tenant-Applicant to approach the Landlord after the New Year; however, [the tenant] did not do so, all of January 2014.

Following the alleged “trespass” in February 2014 concerning the bicycle owned by a friend of the tenant’s son, by letter dated February 08, 2014 the tenant informed the landlord that she would like to “have a conversation about our tenancy agreement and some things.” The letter was posted adjacent to the landlord’s front door. Thereafter the parties met on February 09, 2014, and the notice was issued 10 days later.

Analysis

Section 47 of the Act provides variously, and in part, as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (c) there are an unreasonable number of occupants in a rental unit;
- (d) 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,
 - (iii) put the landlord’s property at significant risk

Based on the affirmed testimony of the parties and the documentary evidence which includes, but is not limited to, several photographs, my findings are set out below.

Included in the landlord's documentary submission are comments concerning the tenant's "rent payment history" and "another tenancy incident" on March 01, 2014. However, I find that these comments are incidental to reasons identified on the notice.

In relation to the term "occupants" referenced in the grounds identified on the notice, the attention of the parties is drawn to Residential Tenancy Policy Guideline #13, which speaks to "Rights and Responsibilities of Co-tenants," and provides in part:

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

I find that the landlord's reference to "unreasonable number of occupants" applies to what were visitors, and not "occupants" within the meaning of that term in the Act. Accordingly, I find there is insufficient evidence of an unreasonable number of occupants in the unit.

I find there is no documentary evidence of written warnings from the landlord or the agent to the tenant, in relation to the conduct or behaviour of the tenant or her son or visitors to the unit, prior to the time when the notice was issued. Indeed, the main interactions between the parties appear to have been verbal, and generally between the agent, the tenant and her son. I also find there is no documentary evidence of neighbours' concerns / complaints about the conduct or behaviour of the tenant or her son or visitors to the unit. Neither is there any documentary evidence of related calls to the Police by the landlord, the agent, or neighbours.

Further, I note the absence of any initiative by the landlord to contact the tenant following the occasion in December 2013 when the tenant's son had a party at the unit. Rather, the landlord waited and a conversation about the event took place between the parties following the tenant's letter to the landlord dated February 08, 2014.

As to the incident(s) involving the bicycle, I am not persuaded that property was damaged or that entry into the unfenced area of the yard described in the landlord's submission as "for the Landlord's exclusive use," constituted an unlawful "trespass" sufficient to warrant the issuance of a notice to end tenancy. Further, I note the following statement included in a letter dated April 02, 2014, which was written by the original landlord and submitted in evidence by the tenant:

....under our agreement, there were no restrictions to access and use of the back yard or rental property in the agreement, other than the closed in garage which was part of the unit next door.

In summary, while it appears there may be some feeling of animosity between the agent, and the tenant and her son, I find that the landlord has failed to meet the burden of proving cause to end the tenancy. Specifically, within the context of what is approaching a 5 year tenancy (nearly 16 months of which involve these particular parties prior to issuance of the notice), I find there is insufficient evidence that the timing and nature of incidents described by the landlord, in concert with the timing and nature of the landlord's responses, signal conduct or behaviour which "**significantly** interfered with or **unreasonably** disturbed another occupant or the landlord," or "put the landlord's property at **significant risk**." In the result, the notice is hereby set aside, and the tenancy continues uninterrupted.

As the tenant has succeeded with her application, I find that she has established entitlement to recovery of the \$50.00 filing fee. I hereby order that the tenant may withhold this amount from the next regular payment of monthly rent.

Finally, attention is drawn broadly to **Part 4 - How to End a Tenancy**, which among other things includes provision for mutual agreement "in writing to end the tenancy" (section 44(1)(c)).

Conclusion

The notice is hereby set aside. The tenancy continues in full force and effect.

I hereby order that the tenant may recover the \$50.00 filing fee by way of withholding that amount from the next regular payment of monthly rent.

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: April 30, 2014

Residential Tenancy Branch

