



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, MNDC, RR

Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause received November 10, 2014 and for an extension of time to do so. They also seek compensation and a rent reduction alleging the landlord and his family, who live above, are making too much noise and that the tenants have been denied a parking spot given under the tenancy agreement and that the premises were not clean at the beginning of the tenancy and that there was inconsistent hot water for four days at the start of the tenancy.

The Notice to End Tenancy claims that the tenants; a) significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant or put the landlord's property at significant risk, and b) that the tenants have engaged in illegal activity that has caused or is likely to cause damage to the landlord's property or that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property, or that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Proof of any one of these grounds justifies a tenant's eviction under s. 47 of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the eviction Notice was justified under any of the designated grounds or that the tenants are entitled to monetary compensation?

Background and Evidence

The rental unit is the two bedroom lower suite in a conventional home. The landlord and his family occupy the upper portion of the house as well as a recreation room adjacent to the tenants' suite on the lower level.

The tenancy started less than two months ago, on November 1, 2014. The monthly rent is \$700.00 and the landlord holds a \$300.00 security deposit.

After only a few days, on November 11, the landlord issued and served the Notice in question. The Notice document itself is in an older form, however the tenants did not raise that as an objection.

The tenant Mr. G..E.G.explained that he was late making the dispute application because he had injured himself. The application appears to have been made four days after the time for doing so had passed. The landlord had not re-rented the premises nor would he be otherwise prejudiced by extending the time and so I granted the tenants' request for an extension of time to apply to dispute the Notice.

The landlord testifies to three grounds for the eviction Notice. First, he says, after only two days of the tenancy someone let the air out of all four of the tires on his vehicle. He thinks it was the tenants though he admits that air was let out of the tires on one of the tenant's vehicles as well.

Secondly he says that on about November 7, the tenants' previous landlord approached him and told him the tenants were con artists and didn't pay their rent.

Thirdly, the landlord testifies that the tenants have been shouting profanities and racial slurs up through the ceiling of the rental unit and into the landlord's portion of the house. The landlord's wife Ms. S.K.C. testified to hearing the foul, racist language and indicated their children had heard it too.

The landlord attempted to relate perhaps a fourth ground for eviction. He testified that after receiving the Notice the tenant Mr. G.E.G. stated that the landlord's Hydro bill was going to go up. The landlord says that the tenants now keep lights on all night in the suite. Hydro is included in the rent. That allegation is a matter arising after the Notice to End Tenancy was issued. It cannot serve as a basis for the Notice. The Notice stands or fall based on the circumstances and events that existed as of the date it was issued. Events happening after the Notice may relate to aspects of corroboration or

credibility or may serve as the basis for another Notice but cannot serve to justify and pre-existing Notice.

The attending tenant denies tampering with the landlord's vehicle and points out that his tires were tampered with as well.

He admits there was a rent dispute with his previous landlord and it would appear that landlord has a monetary order against him. He considers it unfair for the previous landlord to convey such information to the present landlord.

The attending tenant denies that any foul language or racial slurs emanated from his suite.

The attending tenant is in the habit of surreptitiously recording his conversations with the landlord. He produced a recording and transcript from after the Notice had been issued in which the landlord states that the real reason he is evicting the tenant is because the tenant is complaining about noise from upstairs.

The tenant argues that he is being significantly disturbed by the walking and "stomping" noise coming from the landlord's residence. He notes that he can aurally follow the movements of the landlord's two daughters and son as they move about above. He can hear voices. He says that the daughters travel lightly but the son in particular makes too much noise. In support of the allegation the tenant produced a digital video of his suite at various locations, recording the sounds from above. He indicates the video is a reasonable representation of the noise he has been putting up with.

The attending tenant testifies that he has not been given a parking space though the tenancy agreement provides he is to have one. He says he and his brother both have vehicles and that the landlord has indicated they may park on the side street. There is unrestricted parking on the side street.

The tenant points out that the local government has a bylaw requiring property owners with secondary suites to provide "one additional off-street parking space."

The tenant also argues that the suite was not clean when he moved in and that he spent considerable time cleaning it, including obtaining anti-mold chemical from the landlord. He notes as well that for the first four days or so of the tenancy the provision of hot water was inconsistent and caused him inconvenience.

The landlord paid the tenant \$50.00 in November, for which the tenant prepared a receipt for “loss of hot water for 4 days & cleaning suite ...” The tenant says the \$50.00 did not encompass all the compensation for the work he did and that he should have been paid more.

In response to the tenant’s evidence the landlord testifies that the tenant has been complaining about the noise and that he and his family have been doing their best to reduce it. He even offered to help pay for the cost of a move. To the question of the recorded conversation in which he indicated that the real reason for eviction was the tenants’ noise complaints, the landlord’s answer was non-responsive; he offered no germane explanation.

The landlord says that there is plenty of on-street parking for the tenants. He says that to give them a parking space in the driveway would create congestion, requiring vehicles to be constantly moved to gain access to the garage.

The landlord testifies that the fluctuation in the hot water supply was a pilot light problem that was quickly remedied. He testifies that the rental unit was reasonable clean at move-in but that the tenants are very particular about cleanliness.

Analysis

The Notice to End Tenancy cannot stand and I cancel it.

There is no evidence upon which one could reasonably conclude the tenants were involved in the vehicle tire incident.

The opinion of a previous landlord may be very relevant to the question of whether to rent premises but, in the absence of outright deception by a tenant, not so relevant after a tenancy agreement has been entered into. The time to check the tenants’ references was long past. This ground for termination fails.

The evidence of Ms. S.K.C. regarding language emanating from the lower suite is directly contradicted by the attending tenant. I find the landlord’s admission that true reason for the Notice was the tenants’ noise complaints, significantly diminishes the effect Ms. S.K.C.’s testimony might have had. I find that this ground for eviction has not been established on a balance of probabilities.

I dismiss the tenants’ claim for compensation.

The tenancy agreement clearly provides that “parking for 1 vehicle” is included in the rent. By any reasonable interpretation that must mean parking on the residential property not on the street. The landlord has no power or authority to contract to give tenants parking on the street. I find the tenants are entitled to a parking spot on the residential property. It appears the landlord has to date failed to provide that facility. However, the tenants have failed to establish any loss as a result of the landlord’s failure. It has not been shown that on-site parking is somehow better or more convenient or less expensive than street parking. One may speculate that on-site parking is more secure than street parking, but an adjudicator is not entitled to base a compensatory award of speculation. The tenant indicates that a road crew is working in the area and take up street parking. He did not relate any particular occasion when either he or his brother had been inconvenienced as a result. The claim for compensation on this ground must fail.

In absence of any proof of loss, I decline to grant a rent reduction for lack of on-site parking. There is no claim for a compliance order forcing the landlord to provide off-street parking.

It is noted that the local government bylaw also provides that the landlord provide parking for any secondary suite. A residential tenancy arbitrator has no power to enforce local government bylaws. The tenants must seek relief through the local government.

In regard to noise from the landlord’s residence I would first note that having regard to the premises the tenants have rented, basically, a portion of the lower floor of a single family dwelling, they should have reasonably expected to hear some noise of normal living activity from above.

I have considered the tenants’ video evidence and I find that any noise that might have come from above the tenants’ rental unit was normal living noise; the faint sound of voices and perhaps footsteps. It is noise the tenants must expect to hear in this accommodation.

In regard to hot water and cleaning, the attending tenant has failed to show the premises were not reasonably clean at move in. A landlord and a tenant’s opinion about what is “reasonably clean” may vary widely and may even change depending on whether it’s the start of the tenancy or the end. In order for an arbitrator to make a reasoned decision about the matter it is almost essential that the claimant provide some

objective evidence in the nature of a photo or video, or at least some corroborative testimony. There was none here.

In any event, I find that the attending tenant received the landlord's \$50.00 payment and provided the receipt as payment in full for the hot water issue and the cleaning. The tenant may have secretly felt it was not enough, but he represented to the landlord that it was. He must abide by that representation. He cannot later claim more.

Conclusion

The tenants' application to cancel the one month Notice to End Tenancy is allowed. The Notice is hereby cancelled. The balance of the tenants' claim is dismissed.

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: December 22, 2014

Residential Tenancy Branch

