



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF

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 provide services or facilities required by law pursuant to section 65.

The tenant did not attend this hearing, although I waited until 1120 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by his agent.

The agent testified that the landlord personally served the tenant with the 1 Month Notice on 9 June 2015. On the basis of this evidence, I am satisfied that the tenant was served with the 1 Month Notice pursuant to section 88 of the Act.

The agent testified that the landlord served his evidence to the tenant by leaving the package with the tenant's caretaker GG. GG resides with the tenant. On the basis of this evidence, I am satisfied that the tenant was served with the evidence pursuant to section 88 of the Act.

The landlord testified that the tenant was still occupying the rental unit. The landlord testified that on 3 August 2015, the tenant gave notice of her intent to vacate the rental unit on or before 31 August 2015. The landlord stated that he was not seeking an order of possession as he respected the tenant at her word that she would vacate the rental unit on or before 31 August 2015.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement? Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant/parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 May 2013. Monthly rent of \$750.00 is due on the last day of the month. Rent for the period 1 July to 31 July is due on 31 July.

On 9 June 2015, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quite enjoyment, security, safety or physical well-being of another occupant or the landlord.

The rental unit is in the lower unit of a house. The tenant and her caretaker, GB, reside in the rental unit. The landlord and agent reside in the upper floor of the house. The agent testified that on a daily basis over the last two years the upstairs occupants have listened to the tenant berate and verbally abuse the caretaker. In particular the agent testified that the tenant has been heard calling the caretaker a "pr*ck" a "c*nt" an "*ssh*ol*". The agent testified that the noise will carry up the vents of the house and is audible in the upstairs area. The agent testified that this is particularly worrying because young children are often upstairs visiting.

The agent testified that over the last two years the tenant has been warned approximately fifteen times to stop using profanity in the house as it can be heard upstairs by the visiting children interfering with their ability to visit their grandfather, the landlord.

The agent testified that she has seen the tenant throw rocks at the caretaker, hit the caretaker with a cane, and slap the caretaker. The agent admitted that the police have not been called in respect of this alleged abuse.

The agent testified that on 8 June 2015, the tenant called the landlord to complain about the air conditioning not working. The agent testified that the air conditioning was broken. The agent testified that the landlord told the tenant that it was broken. The agent testified that the tenant called the landlord a "f*ck*ng liar" and a "f*ck*ng *ssh*I*". The agent testified that this is the only time the tenant has called the landlord names. The agent testified that it was this event that precipitated the issuance of the 1 Month Notice.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlord and agent have provided sworn and uncontested testimony that the tenant's loud profanity is significantly interfering with or unreasonably disturbing both the landlord and agent. In particular, the loud foul language is impeding children from visiting in the home. I find that this interference is significant as a landlord is entitled to have visitors in his home free from the disturbance of the tenant. Furthermore, the persistent nature of the disturbance makes it unreasonable thus significant to the adult occupants of the upstairs of the residential property. On this basis, I find that the 1 Month Notice was validly issued. As the notice is substantiated on the basis of subparagraph 47(1)(d)(i), I need not consider the alternate reason provided as cause. The tenant's claim to cancel the 1 Month Notice is dismissed without leave to reapply.

The tenant did not attend the hearing to advance her case in respect of her request for orders pursuant to sections 62 and 65 of the Act. The tenant bears the onus of proving that these orders are warranted. As the tenant failed to attend, I dismiss these claims without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 12, 2015

Residential Tenancy Branch

