



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC; OPC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

This hearing also dealt with the tenants' 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.

All named parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants were represented by their advocate. The tenants elected to call one witness.

Neither the landlord nor the tenants raised any issues with service of documents.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced

here. The principal aspects of the both the tenants' claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began in or about November 2011. Monthly rent of \$900.00 is due on the first. The rental unit is habitually occupied by the tenant LG, the tenant TDG, the tenant TG, and two children. The rental unit is a two-bedroom apartment. There is no written tenancy agreement in respect of this tenancy although I was provided with a one page rules list that was initialled by the tenant LG. There is no rule in relation to visitors or occupants.

The landlord admits that from its outset the tenancy was for the three adult tenants. At the beginning of the tenancy there was one child. The second child was born shortly after the commencement of the tenancy.

On or about 7 July 2015, the landlord personally served the 1 Month Notice to the tenant LG. The 1 Month Notice was dated 7 July 2015 and set out an effective date of 31 July 2015. The 1 Month Notice set out that it was being given as:

- the tenants are repeatedly late paying rent;
- the tenants have allowed an unreasonable number of occupants in the unit;
- the tenants or person permitted on the property by the tenants have:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenants have engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the tenants' rent is normally paid directly by the Province. The landlord testified that the tenants were late paying August 2015 rent. The landlord did not provide a ledger that indicated late payments. The landlord did not testify to any other late payments.

The landlord alleges that the witness and her husband have been occupying the rental unit as well with their dog. The landlord testified that the witness and her husband have been occupying the rental unit since early June. The landlord testified that he has observed the witness's car at the rental unit late at night and for days on end. The

landlord testified that he observed the witness's husband cutting his hair at the rental unit. The landlord testified that the witness and her husband brought their dog to live in the rental unit. The landlord alleges that the dog is a vicious dog and is a pit bull. The landlord alleges that his insurance does not cover dog bites and that the presence of the dog is dangerous as the dog "looks vicious". The landlord restated several times that he submits that the main issue is that there are too many people occupying the rental unit.

The tenants all testified that the witness and her husband do not live in the rental unit. The tenant LG testified that the witness and her husband are professional fishers and work in the area from early June until the end of August. The tenant LG testified that with the exception of one night in June, neither the witness nor her husband have stayed overnight in the rental unit. The tenant LG testified that when the witness and her husband come to visit the dog stays in the car with the windows rolled down. The tenant LG testified that the witness brought her dog in once and LG promptly told the witness to take her dog out. The tenant LG testified that the dog was in the rental unit no longer than five minutes.

The witness testified that with the exception of one night in June, she has not stayed over at the rental unit. The witness testified that she mostly lives on the boat but occasionally rents a hotel room. The witness testified that there is no time to stay with her sister as the witness and her husband are largely occupied by their fishing business. The witness testified that her dog is not vicious. The witness denies that her car has been parked at the rental unit for days.

The landlord alleges that the occupants of two neighbouring rental units contained within the same residential property have been disturbed by the conduct of the tenants and their guests. The landlord did not elect to call the neighbours as witnesses. The landlord did not provide written statements from the neighbours. The landlord testified that an elderly woman from a residential care facility the street informed the landlord that the tenants were bothering the woman. The landlord testified that the woman told him that the RCMP attended at the rental unit in respect of the witness. The residential care facility is not on the same residential property as the rental unit. The woman was not called as a witness and I was not provided with a written statement from her.

The landlord alleges that having extra occupants in the rental unit constitutes an illegal act.

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.

The 1 Month Notice set out that it was being given as:

- the tenants are repeatedly late paying rent;
- the tenants have allowed an unreasonable number of occupants in the unit;
- the tenants or person permitted on the property by the tenants have:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenants have engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Paragraph 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent. *Residential Tenancy Policy Guideline, "38. Repeated Late Payment of Rent"* provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b). The landlord testified that rent was late on one occasion. Further, this occasion was after the issuance of the 1 Month Notice. In accordance with Policy Guideline 38, one late payment does not constitute repeatedly late payments for the purposes of paragraph 47(1)(b). Accordingly, the notice is not valid on this ground.

Subparagraph 47(1)(c) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has allowed an unreasonable number of occupants in the unit. The landlord has provided testimony that alleges that there are two additional occupants residing in the rental unit. The tenants and the witness have all testified that the witness and her husband do not reside in the rental unit, but do visit. In this case I prefer the evidence of the tenants and witness as they are in a better position to know if someone is staying the night. The landlord's testimony is largely based on unproven conclusions that he reaches on the basis of the witness and her husband being seen in the area. I find, on a balance of probabilities, that there are three adults and two children occupying the rental unit. The tenancy began with three adults and one child. The second child was born shortly after the commencement of the tenancy. I find that this is not an unreasonable number of occupants for a two-bedroom

apartment. Accordingly, the notice is not substantiated on the basis of paragraph 47(1)(c) of the Act.

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 has not provided any firsthand knowledge that the tenants or their guests were causing any significant interference or unreasonable disturbance. The landlord has not provided any statements from the other occupants of the residential property. The complaints of the elderly woman occupying a different residential property are irrelevant for the purposes of this provision. The landlord has failed to establish, on a balance of probabilities, that the tenants or persons permitted on the residential property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. As such, the notice is not substantiated on the basis of subparagraph 47(1)(d)(i).

Subparagraph 47(1)(d)(ii) 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 seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. Subparagraph 47(1)(d)(iii) 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 put the landlord's property at significant risk. The landlord alleges that the dog is vicious and that the risk of dog bites is cause for the purposes of subparagraphs 47(1)(d)(ii) and (iii). The landlord believes this to be true on the basis of the dog's breed and the way it looks. I was not provided with any evidence that the dog in question is actually vicious or has done anything vicious. Without evidence showing that this dog is actually a vicious dog, the notice cannot be substantiated on this reason. As such the notice is not substantiated on the basis of subparagraphs 47(1)(d)(ii) or (iii).

Paragraph 47(1)(e) of the Act set out that a landlord may end a tenancy where a tenant or person permitted on the residential property by the tenant has engaged in illegal activity that results in certain adverse effects. The landlord submits that having more occupants in a rental unit is an illegal act. I have found that there were no additional occupants. Even if I did find that there were additional occupants, this would not be an illegal act for the purposes of paragraph 47(1)(e) of the Act. Accordingly, none of the reasons for cause set out in paragraph 47(1)(e) of the Act can substantiate the 1 Month Notice.

As the landlord has failed to establish that any one of the reasons set out in the 1 Month Notice, the 1 Month Notice is cancelled. The tenants' application to cancel the 1 Month Notice is allowed. The landlord's application is dismissed. The tenancy will continue until it is ended in accordance with the Act.

As the landlord has not been successful in his application, he is not entitled to recover the filing fee.

Conclusion

The tenants' application is allowed. The 1 Month Notice is cancelled and is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

The landlord'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 17, 2015

Residential Tenancy Branch

