



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF; CNC, FF

Introduction

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

- an Order of Possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated June 18, 2015 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlords' agent, HK ("landlord") and the two tenants, tenant MK ("tenant") and "tenant HK" attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to speak on behalf of the landlords, who are his parents, as an agent at this hearing. The landlords provided a letter to this effect, which was signed by both landlords, with the landlords' application. "Witness JW," who is the tenant's boyfriend, provided testimony on behalf of the tenants at this hearing.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application. Both parties confirmed that they had reviewed the written evidence of the other party and they were prepared to proceed with this hearing, despite the fact that some of the written evidence was served late, contrary to Rules 3.14 and 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Accordingly, I proceeded with the hearing with both parties' consent. The tenants confirmed personal receipt of the landlords' 1 Month Notice on June 18,

2015. In accordance with section 88 of the Act, I find that that both tenants were duly served with the landlords' 1 Month Notice.

Issue to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

The landlord testified that this fixed term tenancy began on April 30, 2015 and ends on February 29, 2016, at which time the tenants are required to vacate the rental unit. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was provided for this hearing. The tenants continue to reside in the rental unit.

The landlords issued the 1 Month Notice, with an effective move-out date of July 30, 2015, for the following reasons:

- *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.*

The landlord stated that the tenants allowed one extra person, witness JW, to occupy the rental unit, which is an unreasonable number of occupants. The landlord indicated that because this rental unit is only a two-bedroom unit, only two tenants are allowed. The landlords have noted this in their standard RTB tenancy agreement. The landlords have crossed out the provision in the tenancy agreement indicating that the landlord must not impose restrictions on the tenants' guests and indicated "removed." The landlords have also indicated on the tenancy agreement that any person in the unit after 8:00 p.m. is a trespasser. The landlord stated that he has seen witness JW leave the rental unit many times during this tenancy, that witness JW arrives late at night and leaves early in the morning, and that witness JW is living in the unit. The landlord stated that he has noticed witness JW's vehicle parked at the rental unit, further proving that witness JW lives there. Witness JW testified that he does not live at the rental unit, that he has slept over on occasion, and that he is the registered driver of the tenant's

vehicle which is owned by tenant but that he does not have his own vehicle. The tenant confirmed the information provided by witness JW.

The landlords claim that the tenants have significantly interfered with and unreasonably disturbed the landlords. The landlord stated that the tenants play loud music, that they cause other disturbances in the rental unit, and that it is hard for the landlords to sleep at night due to these noises. The landlord stated that the landlords have not warned or advised the tenants about their loud music disturbances. The tenants confirmed that they have not been given any written or verbal warnings from the landlords regarding loud music. The tenants deny the landlords' allegation of loud music, stating that they are quiet and away at work or school during the week.

The landlord indicated that the tenants are confrontational towards the landlords and that they record the parties' conversations on their phone. The landlord explained that his father, the male landlord, had to see a specialist because of stress cause by the tenants and that there is medical documentation confirming same provided for this hearing. The tenants stated that they are afraid of the male landlord and they were told by the police to record conversations between the landlords and tenants, due to prior occasions when the tenants had to call the police to the rental unit.

Analysis

While I have turned my mind to all of the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

According to subsection 47(4) of the Act, tenants may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenants received the notice. The tenants received the 1 Month Notice on June 18, 2015, and filed their Application on June 22, 2015. Therefore, they are within the time limit under the Act. The onus, therefore, shifts to the landlords to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

I find that the landlords have not met their burden of proof to show that the tenants allowed an unreasonable number of occupants in the unit. I accept witness JW's testimony and I find that he is a guest of the tenants and that he visits them at the rental unit. In any event, I do not find one person to be an "unreasonable" number of occupants in the rental unit. I find that the landlords' handwritten provisions in the tenancy agreement limiting the tenants' guests, are unenforceable, as the landlords cannot contract outside of the Act and any attempt to do so is of no effect, as per

section 5 of the *Act*. The landlords cannot unreasonably restrict persons permitted on the residential property by the tenants, as per section 30(1)(b) of the *Act*.

I find that the landlords did not provide sufficient documentary or testimonial evidence to show that the tenants or other occupants permitted on the property by the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord. No witnesses were produced by the landlords at this hearing, to substantiate the landlords' claims. If loud music was occurring "almost every weekend" during the year and also during the weekdays in the summer, as per the landlord's testimony, the landlords have failed to take action to rectify the situation. The landlords claim to have lost sleep due to this noise, but have not confronted the tenants while the noise is occurring, despite the fact that they claim to be awake during this time. The landlord stated that it was because the landlords did not wish to leave the house during the night, in order to confront the tenants. The landlords have not issued any written or verbal warnings to the tenants in order for them to rectify their alleged behaviour.

I find that the landlords did not provide sufficient documentary or testimonial evidence to show that the tenants' audio recordings between the parties have affected the male landlord's health, such that it is a "significant" interference or an "unreasonable" disturbance. The male landlord's medical records show that he has pre-existing medical problems and that a stress test was positive, but does not refer to the tenants or their situation as a cause.

For the above reasons and on a balance of probabilities, I find that the landlords have failed to prove that the tenants allowed an unreasonable number of occupants in the rental unit, as per section 47(1)(c) of the *Act*. I also find that the landlords have failed to prove that the tenants or people permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlords, as per section 47(1)(d)(i) of the *Act*.

I allow the tenants' application to cancel the landlords' 1 Month Notice, dated June 18, 2015. I dismiss the landlords' application for an order of possession for cause based on the 1 Month Notice, dated June 18, 2015, without leave to reapply. The landlords' 1 Month Notice, dated June 18, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the landlords were unsuccessful in their application, they are not entitled to recover the \$50.00 filing fee for their application.

As the tenants were successful in their application, they are entitled to recover the \$50.00 filing fee for their application.

Conclusion

The tenants' application to cancel the landlords' 1 Month Notice, dated June 18, 2015, is allowed. The landlords' application for an order of possession for cause, based on the 1 Month Notice, dated June 18, 2015, is dismissed without leave to reapply. The landlords' 1 Month Notice, dated June 18, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenants are entitled to deduct \$50.00 from a future rent payment at this rental unit in full satisfaction of the monetary order for the filing fee for their application.

The landlords' application to recover the \$50.00 filing fee is dismissed without leave to reapply.

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: August 25, 2015

Residential Tenancy Branch

