



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC, FF (Landlord's Application)
 CNC, FF (Tenants' Application)

Introduction

This hearing was convened as a result of cross applications. In the Landlord's Application she sought an Order of Possession based on both a breach of the Tenancy Agreement and Cause and to recover the filing fee. The Tenants sought to cancel the Notice to End Tenancy for Cause issued on June 23, 2015 and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

In a case where Tenants have applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the Landlord to provide their evidence submission first, as the Landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?
3. Should either party recover the fee paid to file their application?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement. This fixed term tenancy began on April 1, 2015 and is set to end on September 30, 2015. The Landlord as well

as both Tenants initialed the box which provides that after the fixed term ends the Tenants are to vacate the rental unit. Rent in the amount of \$850.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the Tenants. The Landlord testified that although the Tenants were supposed to pay a pet damage deposit, they had failed to do so.

The parties agree that the Notice was personally served on the Tenants on June 23, 2015. The Notice indicated the Tenants were required to vacate the rental unit by July 30, 2015.

The reasons stated in the Notice were that the Tenants or a person permitted on the residential property by the Tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and,
- put the landlord's property at significant risk.

A further reason cited in the Notice was that the Tenants have not paid the pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement and have therefore failed to comply with a material term.

LANDLORD'S EVIDENCE

The Landlord testified that the reasons for issuing the Notice were due to the disturbance caused by the Tenants, the number of times other occupants of the rental building called the police because of the Tenants' arguing and fighting as well as the Tenants failure to pay the pet damage deposit when required.

The Landlord stated that on four occasions the police have been called due to the Tenants yelling, screaming, fighting and arguing. The first occasion discussed by the Landlord was when the police were called on May 27, 2015 due to an argument between the tenants. According to the Landlord, another occupant of the rental building, B.U. called the police. Introduced in evidence was a copy of an email from B.U. regarding this incident in which B.U. writes:

"Hi [Landlord],

On May 27th at 1 pm, I was coming home from work when the female tenant from [rental unit] was coming into the building when I heard shouting. She started shouting at her male roommate. She was calling him and pig and made reference to him spitting on her. She then shouted to him that there was a witness so not to touch her. She then started pointing at me yelling, there he is. He is my witness. The male roommate did nothing but go back inside.

I felt unsafe when that happened due to the fact I don't know them and she was bring me into a situation that I didn't want to be a part of.

There have been other times when I can hear fighting outside in the parking lot and its them [rental unit].

...

[Reproduced as Written]

The Landlord further testified that the police attended the rental unit again on June 10, 2015. She did not provide any further information as to the reason for the police attendance on this date.

On June 13, 2015 another occupant J.I., called the police because of the fighting between the Tenants. Introduced in evidence was an incident report dated July 11, 2015 written by the Tenant. J.I. wrote:

"On June 13, 2015, I contacted the [local] police department because the tenants in [rental unit] were violently fighting and screaming for help. The yelling and screaming is loud and consistently happens. On July 9th the [local] police came to my door look for the tenants in [rental unit]. The tenants in [rental unit] often yell and slam doors. It is very concerning and disruptive."

[Reproduced as Written]

The Landlord also provided an email from another occupant of the rental building dated July 14, 2015 wherein the writer informs the Landlord that the police were *again* at her rental unit looking for the Tenants.

The Landlord also received a complaint from J.J., another occupant of the rental building, who wrote in an email dated July 20, 2015 that the Tenant, R.W., was banging on the front entrance to such an extent that J.J. thought he was trying to break into the building. According to J.J., R.W. then blocked the lock to ensure the door would stay open and to allow entry to people who do not reside in the apartment building. J.J. also wrote that the police have attended the building on a few occasions for reasons which appears to be related to the Tenants.

The Tenancy agreement provided that the Tenants were to pay a \$425.00 pet damage deposit on or before April 1, 2015. Also introduced in evidence was a document dated July 13, 2015 wherein the Landlord includes communication between herself and the Tenants regarding the pet damage deposit. In this communication the Landlord demands payment of the pet damage deposit by May 15, 2015 failing which she asks that they remove their cat.

TENANTS EVIDENCE

Both Tenants provided affirmed testimony in response to the Landlord's submissions.

In response to the Landlord's allegations that the Tenants unreasonably disturb others, M.T. testified as follows:

- The police attended on May 27, 2015 because she and R.W. were fighting. She stated that the police attended on June 10, 2015 and July 9, 2015 as a follow up to the May 27, 2015 incident.
- The police attended again on June 13, 2015 because another occupant called them due to the Tenants' arguing. She stated that they were "arguing more than normal" and that the "echo was loud". She further stated that the argument occurred at 11:30 at night.
- The third time the police attended was because a guest of the Tenants, T.M., called the police. According to M.T. he was in the room with them and when he heard the Tenants fighting he "got spooked". M.T. stated that when the police attended they "escorted T.M. out of the rental unit. M.T. further stated that she believed that T.M. was "drunk and high".

In response to the Landlord's allegations that the Tenants unreasonably disturb others, R.W. testified as follows:

- He does not believe the complainants are telling the truth as they all live on the other side of the building and couldn't possibly hear what goes on in the rental unit.
- He stated, "*We argue. Every couple argues. We don't bother anyone.*"

- The police came back to the rental unit as a follow up as that is their policy.

When I asked R.W. about the time their friend T.M. called the police, R.W. stated, *“He got freaked out. He said he pocket dialed.”*

In response to the Landlord's allegations that the Tenants have failed to pay the pet damage deposit, R.W. testified as follows:

- The Tenants are waiting for money from their former landlord to pay the requested pet damage deposit.
- *“She is never around. I’m not going to chase her down to pay the pet damage deposit.”*

Analysis

After considering all of the written and oral submissions submitted at this hearing, I find that the Landlord has provided sufficient evidence to show that the Tenants are in breach of the tenancy agreement by failing to pay the pet damage deposit. It is the Tenants' obligation to pay the pet damage deposit and not the Landlord's responsibility to attend the rental unit to collect payment.

Further, I also find that the Landlord has met the burden of proving that the Tenants have significantly interfered with or unreasonably disturbed other occupants of the rental building.

In this case the Landlord provided evidence from four different occupants of the rental building regarding their concerns with the Tenants' behaviour. These complainants describe the Tenants fighting, arguing and “screaming for help”. There is no doubt that the Tenants' behaviour is disturbing to the other occupants of the rental building. I also accept the Landlord's evidence that the arguing and fighting between the Tenants is such that the other occupants of the rental building are unreasonably disturbed.

Further, the Tenants confirmed the police had attended on three occasions due to their fighting; one such occasion was as a result of a guest of the Tenants' calling the police. Both Tenants confirmed that they argue, however neither seem to appreciate how their behaviour negatively affects others.

Therefore, I dismiss the Tenants' application to cancel the Notice. The tenancy will end in accordance with the Notice.

As the Tenant's application is dismissed and the Landlord has made an application for an Order of Possession, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states: Order of possession for the Landlord

55 (1) If a Tenant makes an application for dispute resolution to dispute a Landlord's notice to end a tenancy, the director must grant an Order of Possession of the rental unit to the Landlord if, at the time scheduled for the hearing,

(a) the Landlord makes an oral request for an Order of Possession, and

(b) the director dismisses the Tenant's application or upholds the Landlord's notice.

As I have dismissed the Tenants' application, I find that the Landlord is entitled to an Order of Possession effective **two days after service, at 1:00 P.M.** This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an Order of that Court.

The Landlord has been successful with their application and the Landlord is entitled to recover the cost of filing the application. Therefore, I grant the Landlord a Monetary Order in the amount of \$50.00 and the Landlord is entitled to deduct that amount from the security deposit in full satisfaction of the claim.

Conclusion

The Tenants' application to cancel the Notice is dismissed.

The Landlord is granted an Order of Possession. I also grant the Landlord a Monetary Order for the cost of filing their application and the Landlord is entitled to deduct that amount from the security deposit.

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: September 03, 2015

Residential Tenancy Branch

