



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, FF

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; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receiving the tenants' Notice of Hearing Package. Neither party submitted any documentary evidence except for the tenants' copy of the 1 Month Notice. Based upon the uncontested evidence of both parties, I find that the landlord has been properly served with the Notice of Hearing Package as per section 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to an order to recover the filing fee?

Background and Evidence

Both parties agreed that there was a signed tenancy agreement, but that neither party deemed it necessary to provide a copy to the Residential Tenancy Branch for the Hearing. Both parties agreed that the tenant, M.C. has been a tenant for approximately 10 years. The tenant's wife, G.C. moved in shortly after the beginning of the tenancy and that they had a child who is currently 7 years old during.

Both parties agreed that on June 30, 2015, the landlord served the tenant with the 1 Month Notice dated June 30, 2015. The 1 Month Notice displays an effective end of tenancy date of August 1, 2015 and sets out two reasons to end the tenancy that were 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
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The landlord, J.S. (the landlord) gave direct testimony that the tenants' 7 year old child had used the building intercom system approximately 3 months ago and used profanity and abusive language which was recorded by the building caretaker. The landlord also stated that the tenant was fined \$200.00 because the tenant's child was riding his bicycle in the parking garage contrary to the strata rules.

The tenant, M.C. stated that this was a one-time event for which he has spoken to his son to never repeat abusing the intercom system. The tenant, M.C. also stated that he has not received any notification of a strata fine from the landlord. The landlord stated that he had verbally told the tenants about the fine, but has not yet provided a copy of the strata fine notice to the tenant.

The landlord gave direct testimony that the tenant has assigned or sublet the rental premises without the written consent of the landlord. The landlord stated that he became aware of the assignment when he was notified by the tenant, M.C. that his wife would be making rent payments directly to him by cheque as he would be no longer residing at the premises. Both parties confirmed that the tenant, G.C. has been making rent payments by cheque to the landlord which he has accepted. The landlord does not accept the tenant's wife as his tenant.

The tenant, M.C. disputed the landlord's claim clarifying that he is still the tenant and that his wife of 10 years and 7 year old child are still occupants under his tenancy agreement. The tenant, M.C. stated that he was complying with a government order to vacate the rental premises on a temporary basis. Both tenants are waiting for the outcome of a review hearing in October by the Ministry of Children and Family Development to allow him back into the premises.

Analysis

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

As both parties have confirmed in their direct testimony that the landlord served the tenants with the 1 Month Notice dated June 30, 2015 in person, I find that the tenant was properly served with the 1 Month Notice in person on June 30, 2015.

In an application for an order of possession on the basis of 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. In this case the landlord has provided 2 reasons for cause.

Section 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 did not provide letters or testimony from any of the other occupants or the building caretaker to justify his reason for cause. The tenants have denied that there is any continuing significant interference or unreasonable disturbance by the tenants' 7 year old child. The tenant has occupied the rental unit for 10 years. I was not provided with any evidence that the tenants' child continued in his actions of disturbing the other occupants of the building caretaker or that this was not an isolated one-time event.

On the basis of the landlord's lack of evidence and the plausible explanation provided by the tenants, I find, on a balance of probabilities that the landlord has failed to prove that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. This portion of the landlord's reason for cause is dismissed.

Section 47 (l) (i) of the Act permits the landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has assigned the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent.

The landlord alleges that the tenant, M.C. by moving out of the rental premises and leaving his wife and child to remain has assigned/sublet the rental premises without his written consent.

Both tenants have disputed this claim stating that this is a temporary situation where the tenant, M.C. is complying with a temporary government order which is currently under a review to be heard in October 2015. Both tenants hope to be reunited at that time.

In this circumstance, I find that the landlord has accepted the tenant's wife, G.C. as a tenant and not an occupant. The landlord's direct testimony shows that he was aware of the tenant's wife moving in with the tenant after the start of the tenancy. The landlord stated that he did not accept G.C. as a tenant, but accepted rent payments directly from G.C. The landlord failed to provide any notification that rent payments were being received for "use and occupancy only" and that the G.C. was not considered a tenant. I find that the landlord in failing to give this

notification has waived his right and reinstated the tenancy to include the tenant's wife, G.C. The landlord's second reason for cause is dismissed.

The landlord has failed to provide sufficient evidence to satisfy me on a balance of probabilities that at least one of the reasons set out in the notice is met. The tenants' application is granted. The 1 Month Notice dated June 30, 2015 is set aside and the tenancy shall continue.

The tenants have been successful in this application and as such, I allow the tenants to recover their \$50.00 filing fee.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice of June 30, 2015. This tenancy continues and the 1 Month Notice of June 30, 2015 is of no force or effect.

I issue a monetary award in the tenants' favour in the amount of \$50.00 to enable them to recover their filing fee. To implement this portion of my decision, I order the tenants to reduce their next scheduled monthly rent payment by \$50.00. This is a one-time reduction and monthly rent reverts to its previous level on the month following this \$50.00 reduction in rent.

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 15, 2015

Residential Tenancy Branch

