



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC O OLC FF

Preliminary Issues

Residential Tenancy Rule of Procedure 2.3 states that in the course of the dispute resolution proceeding if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenants' application I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. For disputes to be combined on an application they must be significantly related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy for cause.

In addition to the aforementioned 1 Month Notice to end tenancy for cause each party submitted a copy of a 2 Month Notice to end tenancy for landlord's use. Each party was given the opportunity to explain if they were prepared to discuss both eviction Notices during the October 8, 2015 hearing. Both the Landlords and the Tenants testified that they wished to present their evidence and obtain a decision on both the 1 Month Notice and the 2 Month Notice.

Based on the above, I amended the Tenants' application to include the request for an Order to set aside, or cancel the 1 Month Notice and the 2 Month Notice, pursuant to section 64(3)(c) of the Act. I then dismissed the balance of the Tenants' application, with leave to re-apply, pursuant to section 62 of the *Act* and Rule of Procedure 2.3.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on August 4, 2015. As amended above, I will deal with the Tenants' requests to cancel the 1 Month Notice and the 2 Month Notice and determine if the Tenants are entitled to recover their filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by the Landlords, the Landlords' Witness, and both Tenants. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenants gave affirmed testimony that they served the Residential Tenancy Branch (RTB) and the Landlords with copies of the same documents. The Landlords affirmed receipt of the Tenants' evidence and stated that they did not submit documentary evidence. Upon further review of the documents before me the Landlords changed their testimony to say they had submitted evidence consisting of a copy of the 2 Month Notice.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which was presented and is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords proven the merits to uphold the 2 Month Notice to end tenancy issued August 14, 2015?
2. Have the Landlords proven the merits to uphold the 1 Month Notice to end tenancy issued July 31, 2015?

Background and Evidence

The undisputed evidence was the Landlords and Tenants entered into a verbal month to month tenancy agreement that began on March 15, 2015. Rent of \$1,000.00 is due on or before the first of each month and on March 1, 2015 the Tenants paid \$500.00 as the security deposit.

The rental unit was described as being a self-contained basement suite in the lower level of a two level home. The Landlords reside in the upper level of the home.

The Landlords testified that once they realized that the eviction was not going to happen in one month based on the 1 Month Notice they issued a 2 Month Notice to end tenancy and were willing to forgo the last month's rent in order to have this tenancy ended.

The Landlords submitted that they issued the 1 Month Notice to the Tenants on July 31, 2015. They argued that they served the notice due to the Landlords' lack of security and safety. They stated that the police have attended the rental unit in excess of six times in

response to complaints of drunkenness and fighting between the Tenants. The Landlords spoke of an incident where the female Tenant was taken away in the police car after one of their drunken fights and that fight resulted in damage being caused to the rental unit.

The Landlords asserted that there have been more than 12 incidents of drunken fighting which occur at all hours of the evening. This fighting is causing the Landlords to suffer from anxiety and hives. The female Landlord's ability to work has been impaired as she is often woken up in the middle of the night to the sounds of the Tenants' arguments. Those arguments inhibit her ability to get up early for work. The female Landlord argued that she now fears for her safety when she is home alone as she does not know how the female Tenant will react when she is drunk.

The Landlords stated that on one occasion the Tenants were fighting in the back yard and the female Tenant was punching the male Tenant in the face when a neighbour jumped over the fence to provide assistance. This is when the police attended and removed the female Tenant.

The Landlords argued that they can hear the male Tenant saying stop spitting on me, stop kicking me, as well as hearing them swearing for hours on end. They said they can hear these things through the vents in the floor as they are directly above the Tenants.

The Landlords stated that they have never issued the Tenants any written warnings. They did however, speak to the Tenants on numerous occasions and were always promised that the female Tenant was getting help for her alcohol problems. They said they were always given promises that the Tenants would not do it again and then it would just happen again a few days later.

The Landlords submitted that they are simply trying to regain peace in their house. They stated that their daughter no longer comes to visit so they are seeking ways to go back to the way their house used to be. The male Landlord testified that when they found out about the Residential Tenancy process and the appeal process they thought they would serve the 2 Month Notice to supersede the 1 Month Notice to just get the eviction done and over with.

The Tenants testified that they are not feeling safe in their rental unit. They admitted to having a few arguments when the police attended; however, neither of them has ever been charged with anything. They confirmed that the female Tenant left one evening with the police but she was not taken to the police station. Rather, the police drove her to a different place to keep the peace.

The Tenants stated that they wanted it on record that the Landlords entered their rental unit without proper notice and placed the 1 Month Notice on their kitchen table. The 2 Month Notice is the one that was taped to their door.

The Tenants submitted that the Landlords have been engaged in fights themselves where the Tenants have heard the male Landlord berate his wife and verbally abuse her. They argued that it was their safety that was in jeopardy and not the Landlords. They indicated that they have been seeking another place to live; however, they have not been able to secure another place as of yet.

At this point in the hearing the parties were given the opportunity to settle these issues. Unfortunately the parties were too far apart and too entrenched in their positions that they were not able to reach a settlement agreement.

Each Notice was reviewed during hearing and the following information was confirmed:

The 1 Month Notice was issued July 31, 2015 pursuant to Section 47(1) of the Act listing an effective date of August 31, 2015 for the following reasons:

- Tenant has engaged in illegal activity that has or is likely to
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The 2 Month Notice was issued August 14, 2015 pursuant to Section 49(1) of the Act listing an effective date of October 31, 2015 for the following reasons:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse).

The male Landlord testified that his daughter was going to be moving into the basement suite so he needed the Tenants to move out no later than October 31, 2015.

The Landlords' Witness was brought into the hearing and provided affirmed testimony. I asked the Witness if she was planning to move into the basement suite to which she answered, "No".

The Witness submitted that she worked at the same location as the female Landlord and because they started work so early in the morning she would often spend the night

after visiting with her family. However, after being woken up and having to listen to the constant screaming, yelling, and swearing from these Tenants she stopped coming over.

The Witness indicated that she could not hear what was being said; rather, she could just hear the sounds of the screaming. She stated that she recalled these events happening since sometime between April and June 2015.

The Tenants were given the opportunity to question the Witness. They asked her why she could not hear what was being said when the Landlords stated they could hear everything through the vents. The Witness replied that she would bury her head under her pillow to try and muffle the sound while she tried to go back to sleep.

Despite being given the opportunity to question their witness, the Landlords did not have any questions for her. It was at this time that the male Landlord stated “well you know now that she is not moving in the basement”. In closing, the Landlords requested an Order of Possession effective October 31, 2015.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The *Residential Tenancy Policy Guideline 2* (Policy Guideline) sets out the two part test for the “good faith” requirement as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and
- 2) the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

Upon review of the 2 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act.

After consideration of the contradictory testimony submitted by the male Landlord regarding his step-daughter moving into the rental unit, I give very little to no weight to the male Landlord's submissions due to lack of credibility.

Given the above, I feel it necessary to caution the Landlord that providing false information to an Administrative Tribunal after being affirmed may be punishable under the Criminal Code of Canada.

In addition to the foregoing, I find the Landlords have failed to prove the good faith requirement of the 2 Month Notice. The Landlords are clearly not planning on having a family member move into the rental unit which is the reason stated on the 2 Month Notice. Accordingly, I uphold the Tenants' request to cancel the 2 Month Notice issued August 14, 2015. As a result the 2 Month Notice is of no force or effect and the Tenants are no longer entitled to compensation equal to one month's rent.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy. In this case the Landlords must prove that the Tenants have engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The evidence is undeniable that this landlord-tenant relationship has deteriorated to the point that everyone is in a heightened state of anxiety. That being said, notwithstanding the Landlords' and Witness' testimony about the ongoing fighting between the Tenants, there was insufficient evidence before me that would prove that either Tenant had engaged in illegal activity. Therefore, I find the Landlords' submitted insufficient evidence to prove the reason the 1 Month Notice was issued. Accordingly, I uphold the Tenants' request to cancel the 1 Month Notice.

The Tenants have primarily been successful with their application; therefore, I award the Tenants recovery of their filing fee in the amount of **\$50.00**.

Conclusion

The Tenants were successful with their application and were awarded recovery of their \$50.00 filing fee.

The 2 Month Notice to end tenancy issued August 14, 2015 was cancelled, and is of no force or effect.

The 1 Month Notice to end tenancy issued July 31, 2015 was cancelled, and is of no force or effect.

The Tenants may deduct the one time award of \$50.00 from their next rent payment or they may choose to collect the \$50.00 from the Landlords by serving them with the enclosed Monetary Order.

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: October 29, 2015

Residential Tenancy Branch

