



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenants; their advocate; and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

Should the tenants be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The parties agreed the tenancy originally began on June 1, 2005 as a month to month basis for a currently monthly rent of \$575.00 due on the 1st of each month with a security deposit paid. The parties did not agree on the amount of the security deposit.

Both parties submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on January 25, 2016 with an effective vacancy date of February 29, 2016 citing the tenant or a person permitted on the property by the tenant has 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.

The landlord submitted that she has received complaints from tenants in the residential property that the tenants have been glaring at them; threatening them and calling police over inappropriate items.

As an example, the landlord stated the tenants called the police regarding a vehicle in the property parking. She stated that there is no assigned by parking in the lot but that the tenant called police because was parked in "his" parking spot.

The landlord submitted that the tenant leaves garbage and other clutter on the back and front porches. She stated that they leave food on the back porch which attracts bears.

The landlord submitted that the tenants also bring donated items from the church home and either stores or fixes them and then sells them. She stated that the rental unit is difficult to get around in and that the tenants leave clutter around the yard and blocking the access door of one of the other rental units.

The landlord stated that in June 2015 she determined that the bathtub/shower required extensive work and she had the tenants (reluctantly) move into another unit. She stated that after she had work on the tub begin the female tenant went into the unit and took a shower despite having all the caulking removed which caused a flood in the unit below.

The landlord confirmed that complaints from neighbouring tenants began shortly after the new tenants moved in to the residential property (one was 2 years ago and the other two were within the last year). The landlord submitted that a former tenant below had also lodged complaints prior to vacating the rental unit.

The landlord stated other occupants had told her that the tenants smoked marijuana which permeated through the residential property. The landlord submitted that on a recent occasion she was talking with the male tenant and he appeared to "be on something". The tenants' advocate indicated the male tenant has a disability that causes him to have uncontrolled facial expressions.

The landlord stated she spoke to the tenant on many occasions advising him of her concerns and the possible impact on the tenancy. The tenants state the landlord has not once discussed or warned the tenant about any problems with the tenancy until he received this Notice. The landlord confirmed that she has not put anything in writing to the tenants regarding any of these complaints or issues.

The landlord also testified that she believes the tenants would be happier in a different rental situation. She stated that she doesn't believe the unit the tenants are in is suitable for children.

The tenants submitted that they have been good tenants and that the landlord even wrote a glowing recommendation for a federal government program regarding how good a tenant they were. The landlord did not dispute this statement.

The tenants dispute the landlord's allegations. The tenants stated that they had some coke cans for recycling and some baby strollers on the porch and the tent on the porch was used as a dry place to smoke.

The landlord submitted into evidence copies of handwritten and typewritten notes with complaints from a number of people; some of whom are other occupants in the property.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

As the tenants dispute the actions that the landlord is alleging and that the landlord has ever spoken to the tenants about any of the issues raised by the landlord in regard to this notice, I find the burden is on the landlord to provide additional evidence to corroborate her allegations.

While the landlord has submitted complaints from other occupants in the property none of the complainants attended the hearing as a witness or to authenticate their complaints and as such, I find their submission is of limited value.

Furthermore, I find the landlord has not provided any documentary evidence in support of her claims. For example, a large part of the landlord's complaint is the condition of the rental unit; the porches; the yard; and clutter blocking other occupant's access points. Yet, the landlord has provided no photographic evidence to support these statements.

I find that, in consideration of the length of this tenancy (almost 11 years) and the lack of documentary and corroborating evidence, the landlord has failed to establish sufficient cause to end the tenancy.

I find the submission of a few complaints, without the ability to discuss the complaints with the complainants (as witnesses in this proceeding), does not provide any confirmation of any ongoing issues that would give rise to cause a tenancy to end.

Also, in the absence of any kind of evidence to confirm the landlord has discussed these issues with the long term tenant I find it would be unfair to end the tenancy based

on only a scribbled note signed by some tenants and others and a typewritten note that is not signed by anyone.

As a result, I find the landlord has failed to establish any one of the causes identified is sufficient to end this tenancy. As such, I find the landlord is not entitled to an order of possession.

Conclusion

Based on the above, I order that the 1 Month Notice to End Tenancy for Cause issued by the landlord on January 25, 2016 is cancelled and the tenancy remains in full force and effect.

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: March 15, 2016

Residential Tenancy Branch

