



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time to dispute a notice to end a tenancy than prescribed and for an order cancelling a notice to end the tenancy for cause.

The tenant attended the hearing with an advocate, and called one witness. The landlord also attended. The parties and the witness each gave affirmed testimony and were given the opportunity to question each other and the witness with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the tenant be permitted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed-term tenancy began on May 1, 2013 and reverted to a month-to-month tenancy after the first year. The tenant still resides in the rental unit. Rent in the amount of \$900.00 per month is payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 as well as a pet damage deposit in the amount of \$450.00, both of which are still held in trust by the landlord. The rental unit is a house with a suite in the lower level and in the upper level. The

tenant resides in the lower level, and the upper level is also tenanted. A copy of the tenancy agreement has been provided.

The landlord further testified that on January 6, 2016 the tenant was served with a 1 Month Notice to End Tenancy for Cause by registered mail. A copy of the notice has been provided and it is dated January 6, 2016 and contains an effective date of vacancy of February 29, 2016. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenant was permitted to have 2 dogs and 2 cats. Her dog had puppies, and the tenant kept one of them. The parties went to arbitration in October, 2015 due to the tenant keeping 3 dogs. The tenant told the arbitrator she had a place for one of the dogs and the notice to end the tenancy that was the subject of the hearing was cancelled and the tenancy continued. However, the dogs are all still in the rental unit and have been all along. The landlord conducted an inspection of the rental unit on December 14, 2015 and all 3 dogs were there.

The rental unit above the tenants' has had 4 different tenants who have all complained about the tenant's dogs. Letters have been provided and the landlord testified that due to the noise, it's unbearable to even be outside. The tenant's dogs are locked up for 8 hours or more and the tenant has also acquired a 3rd cat. The dogs make noise, squealing and yelping and has been described as sounding like they're being murdered, not just barking.

The landlord further testified that the furnace for the rental units is in the tenant's suite. The tenant in the upper level called the landlord because the tenant kept turning off the furnace which resulted in the upper level tenant having no heat. The landlord called the tenant telling her to turn it back on, and it went back and forth with the heat continuing to be turned off. The landlord sent a letter to the tenant on October 9, 2015 advising the tenant to leave the furnace on.

The tenant retaliated by putting on very loud opera music for 16 hours straight. The tenant in the upper unit is a nurse, and as a result of not getting any sleep, wasn't able to go to work.

The tenant testified that she was not in town from December 24, 2015 until January 19, 2016 and was scheduled for surgery on January 20, 2016. She received the 1 Month Notice to End Tenancy for Cause on January 20, 2016 and was not able to drive, and

was not able to file the Tenant's Application for Dispute Resolution until February 3, 2016.

The tenant denies that her dogs bark all the time. The tenant gave 1 dog away after Arbitration, but it started having seizures and the people gave the dog back. Then the tenant's daughter agreed to take it if the tenant would look after it for 12 or 14 days per month, not continuous, while the tenant's daughter works.

The tenant also denies having 3 cats. She had a black one that was a stray and the tenant's daughter took it in August, 2015.

The tenant only turned off the furnace once in April. The neighbour texted the tenant and she turned it on. The tenant turned it off again around October 6, 2015 and got a warning notice from the landlord on the 8th. Several times of doing so is totally not true.

The tenant admits leaving the music on while not home, but does not agree that it was on full blast, and no by-law officer has ever attended about a noise complaint.

The tenant's witness was the previous landlord of the tenant and has known the tenant for 6 years. The witness was at the rental unit frequently and never heard the dogs barking. They are normal dogs and well trained. The witness visited once or twice a week but the witness would not knock on the door. She stated that if you knock, they bark, but once in, they're quiet.

Closing Submissions of the landlord: Tenants in the upper level have moved out and in, and the current tenants are the 4th since this tenant moved into the lower level. There have been numerous complaints always about the tenant's dogs. Tampering with the furnace is also interfering with the tenants upstairs, who shouldn't have to complaint to the landlord about heat. Others are entitled to peace and enjoyment of their homes.

Closing Submissions of the tenant's Advocate: Pursuant to Section 47 (1) (h) (2), the landlord must give the tenant reasonable time to correct a breach. The landlord gave the tenant a letter notifying the tenant that she had 1 week to get rid of excess pets, which the tenant did before receiving the notice to end the tenancy. The tenant took the warning seriously and has complied, rectifying the situation after receiving the landlord's written notice.

Analysis

Firstly, with respect to the tenant's application for more time than prescribed to dispute a notice to end a tenancy, I accept the testimony of the tenant that she was away over the

holiday season and was scheduled for surgery immediately upon return. Given that the landlord testified that the notice was served by registered mail, I find that the tenant did not dispute the notice within 10 days as required by the *Act* due to reasons that were beyond the tenant's control. Therefore, I grant the tenant more time than prescribed to dispute the notice.

Where a tenant disputes a 1 Month Notice to End Tenancy for Cause given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. In this case, I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The tenant denies having 3 dogs or 3 cats testifying that she gave one of each to her daughter but looks after one of the dogs, along with her 2 own dogs, 12 or 14 days per month. The tenant also denies that the dogs bark, however, in reviewing the evidentiary material, perhaps the tenant has no idea what kind of noise the dogs make while the tenant isn't home. The parties had been to Arbitration about the dogs previously and the tenant was well aware that having 3 dogs was not acceptable. I disagree with the tenant's advocate that the notice to end the tenancy should be cancelled because the tenant complied with the written notice prior to receiving the 1 Month Notice to End Tenancy for Cause. I find that the tenant had written notice to correct the breach prior to the previous arbitration hearing.

I also find that the tenant left the music on to deliberately annoy the neighbour. Whether the music was on full blast or not, it served to disturb another occupant.

In the circumstances, I find that the landlord had cause to issue the notice to end the tenancy, and the tenant's application to cancel it is dismissed.

The *Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy or uphold the landlord's notice to end a tenancy, I must grant an Order of Possession in favour of the landlord. Having dismissed the tenant's application to cancel the notice, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy in the notice has passed, I grant the order on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling the 1 Month Notice to End Tenancy for Cause dated January 6, 2016 is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

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 24, 2016

Residential Tenancy Branch