



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 ("1 Month Notice") pursuant to section 47 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Extensive documentary materials were submitted by the landlord and the tenant. This hearing lasted approximately 100 minutes in order to ensure that both parties were able to present testimony and refer to evidence to fully reflect their positions with respect to the application. I note that I allowed the landlord a full opportunity to address the issues as they relate to this tenancy including a technical discussion with respect to music and bass levels. I have endeavored to summarize the testimony and evidence, relying on evidence that I have found to be of primary importance to my ultimate decision. I note, however, that I have taken all of the evidence provided in both testimony and evidentiary submissions into consideration.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to recover her filing fee for this application?

Background and Evidence

This tenancy began in October 1, 2010 as a month to month tenancy. The landlord continues to hold a security deposit in the amount of \$490.00 paid by the tenant at the

outset of this tenancy, October 1, 2010. The rental amount of \$1000.00 is payable on the first of each month.

The landlord issued a 1 Month Notice to the tenant on February 3, 2015. The tenant testified that she received the 1 Month Notice on February 9, 2015 and then applied to cancel the notice on February 12, 2016. The landlord relied on the following grounds to end the tenancy;

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- 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 landlord submitted approximately four letters from past or present tenants who describe him as pleasant and fair. The landlord submitted substantial correspondence to the tenant from himself. The landlord's letters are each several pages in length provided on a variety of dates from January 2015 through to April 2015. The letters include extensive response to requests regarding the unit by the tenant. Some excerpts from these letters include;

- "I hereby revoke anything I've written, said, implied or that you have inferred.... [from October 2014 to February 2015]...your attitude has changed to one of non-cooperation, selfishness and petty, demanding meanness..."
- "...although you've tried these past several weeks to provoke me to anger, I refuse to be goaded into slithering down to your empty hell-hole life of your own devising."
- "Perhaps if you weren't adopting an insular attitude you could show some more respect for those living in the same premises as well as more concern for *everyone* around you."
- "This missive is in response to your recent letter of harassment wherein you make demands on my time, energy, resources and on the facilities found in my Garden Suite and indeed my entire home...I am in control here...You have an amazing propensity for dwelling on the negative aspects of your life, no matter how small or insignificant to anyone else...you are so self-absorbed, selfish and paranoid you actually think the reason my rear porch lamp is no longer left burning all night is due to some inconsideration on my/our part? That you actually keep track of days/times it's not on is truly amazing, Princess..."

The landlord testified that the tenant is very negative in the home and that this negativity significantly interferes with his own health as he is also a resident living at the premises. He submitted a doctor's letter to provide details of his health issues. One letter from a doctor stated,

[The landlord] informs me that the unrelenting demands for unnecessary repairs and upgrades from his garden suite tenant have caused him considerable stress since 2014.

Amongst other issues, the garden suite tenant has demanded exacting music-free quietude despite [the landlord's] declaration from the outset (He showed her the music studio before she rented from him) that his is a musical household. He is a musician and music teacher and thus must play music, particularly when he is teaching students who come for lessons in the home studio. Such stress has been undermining his health and household. He has required medication to manage the increased stress secondary to these inappropriate demands and associated expenses.

The landlord testified that he leaves for work at 6.00am Eastern Time and that he is very disturbed by the tenant in the evenings, preventing him from getting enough sleep. He testified that he takes a variety of medications to combat the negativity of the tenant and that his blood pressure has been impacted by his dealings with the tenant.

The landlord did not submit any evidence of illegal activity by the tenant.

The landlord also testified that the tenant has been repeatedly late in paying rent. He testified that she transfers her rental payments through electronic transfers. He testified that while the transfers "arrive" by email on the day rent is due, he is unable to access the funds for 2-3 business days. The landlord also testified that sometimes the tenant does not send her email funds transfer on the first of the month as required. He testified that he has asked her repeatedly to pay cash for her rent payments. The tenant testified that she pays her rent on time. She submitted materials to show that her email transfers at the end of each month.

With respect to the landlord's claims of noise and negativity, the tenant testified that there is a double standard within the rental unit for herself and the landlord. She testified that when she moved into the rental unit, she was told that "this is a musical house" and that the landlord would often practice playing instruments or have other occupants of the house playing instruments. The tenant testified that there is regularly music-related noise in the building but that a certain amount of noise was agreed-upon at the outset of

the tenancy. The tenant denies being responsible for any unreasonable level of noise and that her noise levels are always below the levels of the landlord's music and television noise.

The landlord testified extensively and provided materials relating to the effects of the level of bass when one plays music. He testified that the tenant plays her music or television stereo with too much bass and too loud thereby affecting him negatively.

The landlord and tenant also raised issues of controversy between the two of them with respect to the tampering of smoke alarms as well as the tenant's contact with the fire department regarding the suitability of the rental unit. I find that I need not outline these matters in detail as they are not pertinent to my decision in this matter. Both parties claimed that the other had unreasonable demands with respect to this tenancy.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 1 Month Notice to End Tenancy on February 3, 2015, the landlord claimed that;

- *Tenant is repeatedly late paying rent.*
- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *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 landlord provided a letter from the bank indicating that, on at least one occasion, funds were deposited into his account on the 2nd of the month. The bank letter provides limited detail. The landlord also submitted a bank letter in support of his claim of late payment of rent by the tenant. That letter stated,

Please be aware that there are different types of bank transfers. Interac e-transfers are typically transferred between 30 minutes to one hour after being sent. An additional type of transfer is an electronic money transfer, which may take from one to two business days before they are received in the beneficiary's account.

The landlord argued that the tenant's payment of rent by electronic transfer results in an unreasonable delay in his receipt of the rental funds that he requires for his mortgage. However, the *Act* provides for payment of rent by cheque. While the residential tenancy agreement provides for payment of rent in Cash or certified cheque, the landlord has accepted payment by electronic means for an extended period of time establishing a pattern of acceptance with respect to this form of payment. I do not find that the landlord has proven that rent has been paid by the tenant later than the date required on the rental agreement. The tenant has provided evidence that her payments are sent on time and that is her obligation under the *Act*. Any safeguards, practical or technical of the bank are not the responsibility of the tenant. Therefore, I do not find that the landlord has established, on the ground of late payment of rent that this tenancy should end.

I note that the landlord also relied on the ground that the tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. Allegations on this ground require clear and decisive proof that the tenant or someone she has allowed on the property is engaged in illegal activity. The landlord did not present any evidence or detail, beyond his statement on the notice to end tenancy that the tenant or her guests have engaged in any form of illegal activity. Given that the tenant disputes this allegation and I have found that there was insufficient documentary evidence submitted with respect to this ground to end a tenancy, I will not consider this ground of the notice to end tenancy any further.

I also do not find that the tenant significantly interfered with or unreasonably disturbed the landlord or other occupants. It is reasonable to assume, based on the testimony at this hearing and the supporting documentary evidence showing the communications between these two parties that both parties perturb each other. However, the standard with which to consider the end of a tenancy is that a landlord or another occupant has been **unreasonably** disturbed or **significantly** interfered with.

The landlord submitted medical documentation that he has advised his doctor that he is adversely impacted by the tenant and that he takes a multitude of medications. However, I do not find that this evidence is sufficient to show that the tenant is solely or significantly responsible for the landlord's condition. I do not find that there is evidence that the tenant has behaved in a manner that has unreasonably disturbed or significantly interfered with the landlord or any other occupant of the building. I find that any disturbance to the landlord is within the realm of the demands of a landlord/tenant relationship as well as a relationship when two parties occupy the same residential premises. Based on all of the evidence presented, including the landlord's medical documentation, I do not find that the landlord has provided evidence to meet the burden

of proof, on a balance of probabilities that he or the other occupants was ***unreasonably*** disturbed by this tenant or her guests.

I am not satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice to cancel the notice to end tenancy. I find the tenant has successfully disputed this notice to end tenancy. The 1 Month Notice to End Tenancy for Cause should be cancelled and the tenancy will continue.

As the tenant was successful in her application, I find that the tenant is entitled to recover her \$100.00 filing fee.

Conclusion

I grant the tenant's application to cancel the notice to end tenancy. The tenancy will continue.

I issue a monetary award to the tenant in the amount of \$100.00.

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: April 20, 2016

Residential Tenancy Branch