



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KANDOLA VENTURES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47 of the *Residential Tenancy Act* (the Act).

The tenant LF (the tenant) attended the hearing on behalf of both tenants. The landlord JF attended the hearing. The agent PK attended the hearing. The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

No issues of service were raised by either party.

Preliminary Issue – Scope of Hearing

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) was issued for June's rent. The tenant has applied to dispute that notice in a separate application for dispute resolution. As the 10 Day Notice is the subject of a separate hearing for dispute resolution, nothing in this decision affects the merits of that application.

Preliminary Issue – Landlords' Request for Tenants to Provide Evidence First

I explained the procedure to the parties. The agent PK asked that the tenant provide the tenants' evidence first.

Pursuant to Rule 7.18 of the *Residential Tenancy Branch Rules of Procedure* (the Rules), the respondent provides his or her evidence first where the onus of proof is on the respondent. This is the case on an application by a tenant to cancel a 1 Month Notice.

In accordance with Rule 7.18, I refused the landlords' request.

Preliminary Issue – Conduct at Hearing

Hearings before the Residential Tenancy Branch, while conducted by telephone conference, are formal legal proceedings.

Both the tenant and the agent PK used inappropriate language in the course of the hearing. Both were cautioned to refrain from using foul language. The parties were warned that failure to comply with this direction may result in their participation in the hearing being terminated. The parties refrained from using offensive language and both continued to participate.

Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

Background and Evidence

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

The landlord JF initially testified that the tenancy began 1 December 2015. The landlord JF then testified that the tenancy began 15 November 2015. The tenant testified that the tenancy began 6 September 2015.

The landlords did not provide any documentary evidence.

The landlord JF admitted that there were no warning letters provided prior to the 1 Month Notice. The landlord JF testified that she attempted to provide verbal warnings to the tenant to use appropriate language and the tenant would leave in a hurry.

The landlord JF testified that the tenant slams the door, yells, swears, rants and raves. The landlord JF testified that the tenants refused to sign the tenancy agreement.

The agent testified that the tenant has placed fabric in the windows of the rental unit. The agent alleges that this is some sort of signal related to narcotic sales. The agent

alleges that the tenant operated a clandestine methamphetamine laboratory that caused a fire at the tenants' old residence.

The agent testified that the landlords began cleaning the rental unit above the tenants' unit at approximately 1330. The agent testified that the landlords' agents threw various furnishings over the balcony railing onto the ground below. The agent testified that the tenant emerged from the rental unit and "became unglued". The agent testified that the tenant was yelling and swearing and was "just an idiot". The agent testified that he believes the tenant is a drug user.

The tenants deny all allegations. The tenant testified that the fire in his last residence was caused by a car fire. The tenant testified that he and his cotenants had resided in the prior residence for twenty five years with no problems. The tenant testified that the fire occurred on 6 September 2015 and that he found the rental unit and entered into a tenancy that day. The tenant testified that the landlord JF provided the tenants with a bed so that they could have somewhere to sleep. The tenant denies that he deals drugs. The tenant denies swearing, but admits that there have been a "couple of altercations". The tenant testified that his door closes quickly so that it may sound like it is being slammed.

The tenant testified that he became upset when the landlords' agents were throwing furnishings from above him. The tenant testified that he believed that there was a domestic dispute and telephoned the police. The tenant testified that the police attended and the agent PK became upset. The tenant denies that he was swearing at this time. The tenant admitted that the landlords purchased new flowers to replace flowers that were damaged by falling debris.

Analysis

In an application to cancel 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.

On 1 May 2016, the landlords served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being 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.

The landlords have made some serious general allegations—there is no corroborating or specific evidence provided by the landlords: there is no contemporaneous documentation of the complaints; no independent witnesses were called; and the

tenants were never provided with any caution letter. The tenants deny the allegations. I do not find the general allegations as made by the landlords credible.

The landlord did provide specific evidence of one event. The landlord JF admits that the landlords and their agents were throwing furnishings over a railing that crashed down in front of the rental unit. The test is whether the tenants conduct was unreasonable. Given the circumstances, I find that the tenants' conduct was not unreasonable. I find that most reasonable people would react strongly to furnishings falling from height in front of their home and damaging property (the flower pots). While not ideal, a strong reaction may involve typically inappropriate language to punctuate the displeasure one might feel at this intrusion. As this conduct is not unreasonable given the extenuating circumstances, I find that the conduct cannot form the basis for ending the tenancy.

The 1 Month Notice is cancelled and of no force and effect. The landlords are not entitled to an order of possession. The tenancy will end until it is ended in accordance with the Act.

Conclusion

The tenants' application to cancel the 1 Month Notice is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 27, 2016

Residential Tenancy Branch