



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to:

- cancel a 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.

The tenant and landlord along with the landlord's agent, HJ (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Application & Evidence

The tenant testified that on May 4, 2016 she forwarded the landlord's application for dispute resolution and evidence via registered mail to the landlord. The tenant provided a Canada Post receipt and tracking number as proof of service.

The landlord testified that she did not receive the application and evidence from the tenant. The landlord testified that on May 18, 2016 she received a text message from the tenant suggesting a hearing was coming up. When the landlord questioned the tenant about the date, the tenant replied that she had sent the dispute by registered mail. The landlord advised the tenant they did not receive it and questioned why the tenant did not provide in it person. The tenant replied that she had proof it was sent.

It is the landlord's position that the tenant deliberately interfered with the service of the application in the hopes that the landlord would not attend the hearing. The landlord testified that on May 25, 2016, after receiving a Canada Post card in the mailbox she and landlord PJ attended the Shoppers Drug Mart Post Office to retrieve the mail. Upon arrival they were told the package was already picked up. The landlord questioned how the package could have been picked up by anyone other than the designated recipient. The landlord testified that the postal worker seemed confused and after looking at his computer advised it appeared the package was picked up on behalf of the sender. The worker allowed the landlord to take a

picture of his computer screen which showed the tenants signature, the date of pick up and tracking number. The landlord testified that on this same date, May 25, 2016, she contacted the Residential Tenancy Branch (the "Branch") to determine the hearing date. The landlord testified that after speaking to two separate Branch members she was given the hearing details. The landlord explained that on May 26, 2016 she posted to the tenants door, her own evidence package in response to the application.

Initially the tenant testified that the hearing package and evidence was returned to her on May 25, 2016. She explained that the landlord had so many days to pick up the package and when left unattended the package was returned to her, the sender. When asked to clarify, the tenant stated that she did not receive the returned package through the mail; rather she went in to the post office to retrieve the package. Again when asked to further clarify, the tenant stated that she had tracked the status of the package online and knew attempted deliveries had been made but not delivered. She called Canada Post and was given specific dates she could attend the post office to retrieve the returned package. The tenant stated she attended the post office and retrieved the package as it was not picked up by the landlord. The tenant testified that she made a reasonable attempt to send the package. The tenant further acknowledged that she did not attempt to deliver the package and evidence by any other method. The tenant testified that she did not receive the landlord's evidence package.

There is no dispute that the tenant's application and evidence were sent by registered mail and not received by the landlord. Regardless of whether the tenant interfered with the service, the landlord obtained the hearing date from the Branch, attended the hearing, and was prepared to proceed. Based on this, I find pursuant to section 71 (2)(b) of the *Act*, that the application was sufficiently served.

The landlord did not receive the evidence submitted by the tenant via registered mail or any other means. For this reason, I have not relied on the tenant's evidence package to form any part of my decision. Because the evidence submitted by the landlord was late and the tenant denied receipt of it, I have not relied on the landlord's evidence package to form any part of my decision. My decision rests solely on the parties' testimony.

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 the filing fee for this application from the landlord?

Background and Evidence

The rental property contains two rental units below the landlord's living space. The tenant resides in one of the lower rental units. The tenancy began on October 1, 2015 on a month to month basis. Rent in the amount of \$575.00 is payable on the first of each month. The tenant

remitted \$300.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant confirmed personal receipt of the landlord's 1 Month Notice on April 29, 2016 with an effective date of June 2, 2016. The landlord testified that the 1 Month Notice was issued for the following reasons:

- *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*
- *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*
 - *Jeopardize a lawful right or interest of another or the landlord*

The landlord testified to a number of instances between the tenant and the neighbouring tenant; however only those prior to the 1 Month Notice will be addressed. The landlord testified that the tenant yells and screams during odd hours of the night. The landlord testified that she knows these noises come from the tenant and not from the neighbouring tenant of ten years because he has never made any such noises before. A portion of the landlord's family are shift workers and find it difficult to sleep due to the ongoing noise. The landlord testified that on March 21, 2016 the tenant physically assaulted the neighbouring tenant with a lamp. The tenant smashed the lamp over the neighboring tenant's head cutting the neighbouring tenant's ear open. The police were called and a file was created. The landlord testified that on April 20, 2016 the tenant approached her on her sundeck and told her the neighbouring tenant had a gun. The police were called and attended to the residence. Upon speaking to the police the tenant denied the neighbouring tenant had a gun. The landlord testified that on this same date, April 20, 2016 the landlord verbally warned the tenant that further issues with the neighbouring tenant and noise complaints would result in eviction. The tenant replied that she would be happy to leave provided she received a 2 Month Notice. On April 21, 2016 the neighbouring tenants' sister attempted to visit her brother but could not enter the lower basement area due to the basement door being secured by a red wire. The landlord testified that only one of two people could access this door from this side, the tenant and the neighbouring tenant. It is the landlord's position that it was not the neighbouring tenant as he knew his sister was coming with food and money and would not prevent her entry, therefore the landlord concluded it was the act of the tenant. The landlord testified that it has been reported to her by the neighbouring tenant's sister that she is filmed by the tenant when she attends the rental unit to visit her brother. The landlord testified that the tenant erected a wood wall between the two rental units without the permission of the landlord.

The tenant testified that the neighbouring tenant bangs on the walls and screams. She indicated that he is mad because he did not get her rental unit. In regards to the physical assault, the tenant testified that she was never arrested and stated she got the 1 Month Notice 40 days after the assault took place. The tenant disputed being told she would be evicted for noise, instead she contended that the landlord told her not to call the police because the rental unit was illegal. The tenant had no knowledge of the red wire she stated this was made up by the landlord. It is the tenant's position that the landlord's really want the rental unit for their own use but issued the 1 Month Notice instead. The tenant erected the wood wall with the landlord's knowledge. The tenant testified that the neighbouring tenant has a friend who has a known break and enter history and when she reported this to the landlord she did not do anything. The tenant testified that she did nothing to deserve the 1 Month Notice and the landlord has provided no evidence.

Analysis

A landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The onus is on the landlord to prove the significant interference or unreasonable disturbance took place by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of oral testimony regarding the ongoing issues between the tenant and neighbouring tenant. The tenant disputed being an issue herself and placed blame on the neighboring tenant.

I prefer the testimony of the landlord over the tenant. The landlord was consistent in her testimony and did not waver in her version of events. The tenant's evidence, on the other hand, was not credible. The tenant provided an unsubstantiated motive for the neighboring tenants yelling and screaming whereas the landlord testified he had been a problem free tenant for ten years. The tenant was evasive about the assault stating she was not charged, yet acknowledged an assault by testifying that the 1 Month Notice was issued 40 days later, and lastly provided no explanation that would justify an assault on her neighbour. The tenant did not actively refute the landlord's testimony regarding the report of a gun. The landlord's testimony has persuaded me on the balance of probabilities that the tenant has yelled and screamed within her rental unit, assaulted her neighbour and falsely reported the presence of gun to police. Accordingly, I find the tenant has unreasonably disturbed another occupant and the landlord of the residential property. Therefore, I dismiss the tenant's application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony I find the 1 Month Notice complies in form and content. The effective date of June 2, 2016 on the 1 Month Notice is corrected to May 31, 2016. As the tenant's application has been dismissed I find that the landlord is entitled to a two (2) Day order of possession, pursuant to section 55 of the *Act*.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

An order of possession is granted to the landlord effective **two (2) days after service on 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: June 01, 2016

Residential Tenancy Branch