



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC; DRI, CNC, MNDC, OLC, ERP, RP, RPP, LRE, OPT, AAT, LAT, RR, FF, SS

Introduction

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

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

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

- an additional rent increase, pursuant to section 43;
- cancellation of a 1 Month Notice to End Tenancy for Cause, ("1 Month Notice") pursuant to section 47;
- money owed or compensation for damage or loss, pursuant to section 67;
- order the landlord to comply with the Act, regulations or tenancy agreement, pursuant to section 62;
- order landlord to make emergency repairs for health or safety reasons, pursuant to section 33;
- order the landlord to make repairs to the unit, pursuant to section 32;
- order the landlord to return the tenant's personal property pursuant to section 65;
- order the landlord to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- order of possession of the rental unit, pursuant to section 54;
- allow access to (or from) the unit for the tenant or tenant guests, pursuant to section 30;
- authorization for the tenant to change the locks, pursuant to section 70;
- authorization for the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72; and

- serve documents (not including Notice of hearing package) in a different way than required by the Act.

The tenant and the landlord's two agents, landlord VP (the "landlord") and landlord RH, attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. The landlords confirmed they were agents of the landlord's company named in this application, and had authority to speak on its behalf.

Preliminary Issue – Service of Tenant Application

Although landlord RH confirmed initial receipt of the tenant's application for dispute resolution, he testified that upon immediate settlement discussions between the parties the tenant was directed to retain the application until the following day at which time they would resume settlement discussions and the withdrawal of their respective applications. The parties agreed that in the absence of a resolution or withdrawal of applications the landlord should have received an application but did not. The tenant testified that he tried to give the application to the landlord a couple times whereas the landlord disputed this stating that the tenant was hospitalized and did not have the opportunity to serve the application. Although the tenant did not serve the application in accordance with the *Act*, I find the landlord knew or ought to have known it was an application to cancel the 1 Month Notice. Based on this, I find pursuant to section 71 (2)(b) of the *Act*, that the application was sufficiently served.

Preliminary Issue – Service of Landlord Application

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package on April 5, 2016, at the rental unit where the tenant is residing. The tenant disputed receipt of the landlord's application. Landlord RH testified that he observed the landlord give the application to the tenant on April 5, 2016. Landlord RH testified that he could understand the tenant's lack of recollection as the tenant was acting peculiar speaking of voices in the wall and looking for his keys. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on April 5, 2016, the day it was served.

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an Application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 1 Month Notice and if there was enough time to hear the

tenant's remaining claims, I would hear them. At the end of the hearing, I advised both parties that there was not enough time to hear the tenant's remaining claims, as 60 minutes had already expired in the hearing. I have addressed the remainder of the tenant's claims in the analysis and conclusion sections of this decision, below.

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 for breach of an agreement with the landlord?

Background and Evidence

The parties testified that this tenancy began on January 1, 2012 on a fixed term until January 1, 2013 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$793.00 is payable on the first of each month. The tenant remitted \$375.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord testified that she served the tenant with the landlord's 1 Month Notice, dated March 18, 2016 on the same date, by way of posting to the rental unit door where the tenant resides. The landlord provided a signed, witness proof of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on March 21, 2016, three days after its posting.

The reasons cited in the 1 Month Notice were that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord provided testimony on the tenants overall behaviour; however, only those incidents that occurred prior to the issuance of the 1 Month Notice will be reviewed. In May of 2013 the tenant ran all his hot water taps continuously for three days causing water leakage to the rental unit below and brown nicotine streaks to the rental unit walls. The landlord submitted a warning letter dated May 27, 2013 addressed to the tenant regarding this incident. The landlord testified that she has received complaints throughout the tenant's tenancy from other tenants about noise and yelling from the tenant. To support her assertion, the landlord has provided a copy of a letter dated May 31, 2013 addressed to the tenant regarding noise. On an undisclosed date, but prior to the 1 Month Notice, the tenant threatened the landlord with a crowbar telling her he

would knock her teeth out. The landlord submitted a letter dated February 17, 2015 addressed to the tenant that refers to this incident. Between March 14, 2016 and March 18, 2016 between the early hours of 2am and 4am, while sitting in his car, the tenant broadcast loud music, slammed the car doors repeatedly, yelled and threw cigarette ends out the car windows. During this time period, specifically on March 15, 2016, the tenant ran his shower continuously again creating water leakage into the rental unit below. The landlord testified that approximately every six to eight months the tenant stops taking his prescribed medication and engages in drinking which lead to undesirable behaviours that disturb the landlord and other occupants.

The tenant acknowledged running his hot water on one occasion and running cold water on other occasions. He indicated that he liked the background noise. The tenant admitted to talking to himself at times and stated he had no intention of disturbing the neighbours. In regards to the crow bar incident the tenant testified that the landlord knocked on his door really hard and in response he came to the door prepared to fight off an intruder. He testified that the landlord bared her teeth and in reaction he held the crowbar up. He denied verbally threatening her. The tenant estimated this crow bar incident took place approximately two years ago. The tenant acknowledged playing loud music from his car but estimated this was a year ago. He had already talked to the tenant that complained about this. The tenant could not provide a reason for this behaviour; he suggested he may have been off his medication but was not certain. Later, in the hearing the tenant stated that he now goes to a park to play loud music in his car.

Analysis

Under section 47 of the *Act*, 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 written warning letters and testimony regarding separate incidents that led to the 1 Month Notice being issued. The tenant did not disagree that these instances took place.

I find all the behaviour described and acknowledged by the tenant constitutes an unreasonable disturbance to the landlord and other occupants of the rental building. The evidence shows that other occupants of the rental unit building were disturbed by water leakage and noise. The tenant's behaviour has occurred over time, but has culminated in the most recent episode that occurred in March 2016. Therefore, I find

the landlord has met the onus and 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.

As the 1 Month Notice complies in form and content and as the tenant's application has been dismissed I find that the landlord is entitled to an order of possession. I therefore grant an order of possession to the landlord effective June 30, 2016 at 1:00 p.m.

Conclusion

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

An order of possession is granted to the landlord effective June 30, 2016 at 1:00 p.m.

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 14, 2016

Residential Tenancy Branch