



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant WC and tenant GC (collectively the "tenant") and the landlord's two agents (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Each agent confirmed they were agents of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue

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 tenants' 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 tenants' remaining claims, as 60 minutes had already expired in the hearing. I have addressed the remainder of the tenants' claims in the conclusion section 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?

Are the tenants' authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the parties, the tenancy began on April 15, 2015 on a fixed term until March 1, 2016 at which time it continued on a month-to-month basis. Rent in the amount of \$926.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$450.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

The tenants were issued a 1 Month Notice on February 15, 2016. This 1 Month Notice was addressed in a previous Decision issued by the Branch on April 19, 2016. The Arbitrator in this hearing determined that the landlord had not provided sufficient evidence to show on a balance of probabilities that the tenants caused any significant interference or unreasonable disturbance and cancelled the 1 Month Notice. For ease of reference, the file number for this hearing is set out on the front page of this Decision.

The tenants acknowledged personal receipt of the landlord's 1 Month Notice dated June 29, 2016. The reason cited in the 1 Month Notice was 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.

Landlord

It is the landlord's position that since the 1 Month Notice was issued to the tenants on February 15, 2016 the landlord has continued to receive noise complaints from other tenants in the rental building.

Specifically, the landlord received reports that on the evening of April 23, 2016 until 5:30 a.m. the following day, the tenants were chatting loudly, sliding windows and throwing items around the rental unit. The landlord has provided copies of witness statements and provided witnesses testimony to substantiate his position that the tenants continue to create noise.

Tenants

The tenants confirmed receipt of a warning letter dated April 27, 2016, in regards to ongoing noise complaints and in particular of an April 23, 2016 incident. The tenants contended that the noise reported on April 23, 2016 did not originate from their rental unit. The tenants testified that the noise came from a neighbouring unit and provided a written statement from an attending police officer to substantiate this. In regard to any other complaints of noise, the tenants provided documentary evidence and witness testimony indicating that no noise came from the tenants' rental unit.

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. 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 witness statements and testimony regarding noise created by the tenants.

Although the landlord has provided evidence of noise, the tenant equally provided evidence of no noise. I find the written statement by the police officer which speaks to the April 23, 2016 incident confirms the noise on this date did not originate from the tenants. This finding raises doubt in the ability to correctly identify the source of the noise within the rental building. For this reason, I find that the landlord has provided insufficient evidence to prove on the balance of probabilities that the tenants caused significant interference or unreasonable disturbance and uphold the tenants' application to cancel the 1 Month Notice.

As the tenants were successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenants' application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

The tenants are entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover the filing fee.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

The tenants' application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

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: August 31, 2016

Residential Tenancy Branch