



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 (the "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 landlord, the landlord's assistant CS, the tenant and the tenant's legal counsel SG, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Preliminary Issue – Late Evidence

The tenant testified that on August 15, 2016 she met with the landlord, showed the landlord her evidence package but did not leave a copy of the evidence package with the landlord. On this same date of August 15, 2016, the tenant forwarded the 20 page evidence package via courier to the landlord. The landlord acknowledged receipt of the courier company's notice of attempted delivery on August 17, 2016. The evidence package is deemed served on August 22, 2016 the fifth day after the landlord received the attempted notice of delivery.

Rule 3.14 of the RTB *Rules of Procedure* establishes that documentary evidence must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. If the evidence is received following this timeline, the evidence may or may not be considered depending on whether the applicant can prove this

evidence was new and relevant evidence that was unavailable at the time this application was made. The evidence package was deemed served five days after the hearing and the tenant did not show this evidence was new and unavailable at the time the application was made. For these reasons, I have not relied on the tenant's 20 page evidence package to form any part of my decision.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

The rental unit is the upper level of a two storey unit with a secondary rental unit on the lower level. As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 1, 2016 on a month-to-month basis. Rent in the amount of \$1,150.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$575.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated June 29, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- the 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

Landlord

The landlord testified that the tenant consistently engaged in verbal altercations with the tenants in the lower level rental unit. These altercations resulted in calls to the police and police attendance on a weekly basis.

The landlord attempted to resolve this issue of police presence and ongoing conflict by ending both the upper and lower level tenancies. On June 29, 2016, the lower level tenants signed a 60 day mutual agreement to end tenancy.

The landlord testified that the tenant has conducted unauthorized changes to the rental unit such as the installation of a ceiling fan, painting of the front door and landscape changes to the front yard.

In relation to the illegal activity, the landlord testified that on an undisclosed date, the tenant was involved in a physical altercation with the lower level tenants and police attended the rental unit. The landlord estimated this incident occurred prior to the 1 Month Notice. The landlord testified that despite visiting the police station, she did not obtain police file numbers or reports. The landlord was told it would take a month to process the request for police reports.

Tenant

The tenant does not dispute that frequent calls to the police were made in relation to the lower level tenants. The tenant contended that it was the lower level tenants that were instigating the problems.

The tenant would like to resume her tenancy and explained that these problems would cease following the lower level tenants vacancy.

The tenant acknowledged making the changes listed above to the rental unit and residential property; however she testified that these changes did not place the landlord's property at risk. These changes were made to improve her living conditions.

The tenant testified that she did call the police to report an assault by the lower level tenants on a third party, but testified she did not play any other role in that assault. Further the tenant testified that this incident occurred after the 1 Month Notice was issued.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- the 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

The onus is on the landlord to prove the reasons listed on the 1 Month Notice 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 conflict between the tenant and the tenants in the lower level rental unit, the unauthorized changes and alleged illegal activity.

There is no dispute that some sort of conflict exists between the upper and lower tenants. The landlord's testimony was vague in relation to the tenant's role in this ongoing conflict. Without police reports or witness testimony from the lower tenants to specify the tenant's role or responsibility in this conflict I cannot find the tenant has significantly interfered, unreasonably disturbed or jeopardized the health or safety or lawful right of another occupant. I find the landlord has not met the burden of proof and accordingly do not find this adequate for the purpose of ending a tenancy.

The landlords claim that the tenant has made changes to put her property at significant risk, is unsupported. The landlord has failed to show how painting a door, installing a ceiling fan and changing the landscape has posed a significant risk to her property. Again, I find the landlord has not met the burden of proof and do not find this sufficient for the purpose of ending a tenancy.

In relation to the landlords claim that the tenant has engaged in illegal activity, the landlord has provided insufficient evidence to prove the assault that took place directly involved the tenant or that the assault was a result of some other form of illegal activity.

Overall, I find the landlord has not met the burden of proof and accordingly, I uphold the tenant's application to cancel the 1 Month Notice.

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

Conclusion

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

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

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 19, 2016

Residential Tenancy Branch