



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 an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on August 18, 2016.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

In this case, the tenant’s filed their evidence. The landlord objected to the evidence being allowed. I have reviewed the evidence, I find it is not relevant to the issue of the Notice and therefore, the tenants evidence is excluded.

Preliminary matter

In this case, there are two applicants listed in the application. However, the applicant WH is not a tenant listed in the tenancy agreement. WH has no legal rights or obligations under the Act. Therefore, I have removed WH from the style of cause.

Issues to be Decided

Should the Notice issued on August 18, 2016, be cancelled?

Background and Evidence

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on September 30, 2016.

The reason stated in the Notice was that the tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- put the landlord's property at significant risk;
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant has assigned or sublet the rental unit without landlord's written consent.

The landlord testified that the tenant's vehicle or their guest vehicles are not parking in the assigned spot and this is private property. The landlord stated that the tenant's guest are walking around the property and disturbing them.

The landlord testified that as an example in February 2016, they were outside working on the lawn mower, and one of the tenant's guest said "are you mowing the lawn?" The landlord stated that was a stupid question as it was February and this disturbed them. The landlord stated that the people coming on to the property are snooping around the property. They are standing around, waiting for children or talking on their phone.

The landlord testified that there are at least 10 people coming to the rental unit each day and sometimes they knock on their door disturbing them. The landlord stated that because of all the people coming and going, they are concerned for their property.

The landlord testified that the tenant is also operating a business by doing hair extensions. The landlord stated that they went through the tenants' garbage to show the products they are using. The landlord stated that they have had crime before and every one of these people are a potential burglar and puts the landlord property at risk. Filed in evidence are pictures of the tenant placing garbage in their garbage container and of empty boxes of hair products.

The landlord testified that the tenants have also sublet the unit without written consent as the tenants brother has moved in.

The tenant testified that they have parking according to their tenancy agreement. The tenant stated that one day the landlord's wife was parked in their spot, so they parked their car in the landlord's spot.

The tenant testified that they are a family of six, which consist of 3 adults and 3 children. The tenant stated that they have friends coming to visit and other times they may

babysit other children. The tenant stated that the building consists of four units and their guests have to go through the gate to get to their unit as it is at the back of the building. The tenant stated that sometimes their guest may knock on the wrong door in error and the landlord will scream at their guests when this happens.

The tenant testified that they use hair extensions in their hair and sometime they will do their friends hair. The tenant stated that they are not running a business.

The tenant testified that they have not sublet. The tenant stated that their brother moved in with them for a short time and the landlord told them not to worry the additional rent. The tenant stated when their brother could not find their own accommodation they informed the landlord and the landlord said they would have to pay for the extra occupant in their unit as stated in the tenancy agreement. The tenant stated that they have paid the extra amount of rent for the past two months.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- put the landlord's property at significant risk;
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - jeopardize a lawful right or interest of another occupant or the landlord;and
- the tenant has assigned or sublet the rental unit without landlord's written consent.

In this case, the landlord has not provided any incident that significantly interfered with or unreasonable disturbed another occupant or the landlord, such a loud ongoing noise. I find the incident involving parking spots maybe have been started by the landlord's wife parking in the wrong spot and in any event not significant or unreasonable enough to end the tenancy.

I find the incident that the landlord used as an example, which was a guest of the tenant asking the landlord if they were mowing the lawn, as the landlord was outside working on their equipment, is not significant or an interference as it is not unreasonable for

people to make small talk when walking by each other. Further, there was nothing in the question that was offensive even if the landlord thought it to be stupid.

I am satisfied that the landlord has not provided sufficient evidence that the tenants' guests are causing any problems going to or from the rental unit. While the landlord may believe there is an unreasonable amount of guests; however, this is a family which consists of three adults and three children and it may not be unreasonable to have up to 10 guests a day or for some guests to wait outside while waiting for their children. I also note this was the summer months when children are out of school and is likely a busier time for families and guests to visit.

I am satisfied that the landlord has failed to prove that having a few empty boxes of hair products constitutes operating a business, nor does this prove anything illegal is occurring. The landlord could not provide any statute of law that makes this activity illegal. Further, I find it unreasonable that the landlord is going through the tenants' garbage to make a claim against them or taking pictures of the tenants doing normal activities. I caution the landlord that their behaviour may be an invasion of the tenant's right to privacy and may have serious consequences if this behaviour continues.

I also find the landlord's position that the tenants' guests are all potential burglars to be unreasonable, and not based on any supporting evidence. There was no evidence of any illegal activity on the property, such as drug trafficking, that is likely to cause damage to the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or jeopardize the lawful right or interest of another occupant or the landlord.

I am satisfied that the landlord has failed to prove that the tenant has sublet or assigned the rental unit. The tenants live in the rental unit and their brother has moved in. The tenant has been paying the additional occupancy rent as stated in the tenancy agreement.

I find the evidence does not support the Notice was issued for the reasons stated. Therefore, I grant the tenant's application to cancel the Notice issued on August 18, 2016. The tenancy will continue until legally ended in accordance with the Act.

Since the tenant was successful with their application, I find the tenant is entitled to recover the filing fee from the landlord. Therefore, I authorize the tenant to deduct \$100.00 from a future rent payable to the landlord in full satisfaction of this award.

Conclusion

The tenant's application to cancel the Notice, issued on August 18, 2016, is granted. The tenant is authorized a onetime rent reduction in the above noted amount to recover the filing fee from the landlord.

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: October 19 2016

Residential Tenancy Branch

