



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on September 27, 2016. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause (1 Month Notice) and to recover the cost of his filing fee.

The hearing was conducted via teleconference and was attended by the Landlords, the Landlords' Agent, and the Tenant. The Landlords and Tenant provided affirmed testimony. No submissions were made by the Landlords' Agent.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each party acknowledged receipt of each other's documentary evidence and no issues regarding service or receipt were raised. A separate envelope was received on the Residential Tenancy Branch (RTB) file marked "Confidential – Residential Tenancy Branch Attn: Arbitrator's eyes only". The Landlords testified they submitted the envelope contents to the RTB and did not serve it to the Tenant as it contains confidential information about their Agent.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

1. *Evidence to support your position is important and **must be given to the other party and to the Residential Tenancy Branch** before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

[Reproduced as written with my emphasis in bold text]

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. **In all events**, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added by underlining and bold text].

To consider documentary evidence that was not served upon the other party would be a breach of the principles of natural justice. Therefore, as the Landlords' evidence in the confidential

envelope was not served upon the Tenant in accordance with Rule of Procedure 3.15, I declined to consider that documentary evidence. I did however consider the Landlords' oral testimony and all other evidence served to each party and the RTB.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although all relevant evidence, oral and documentary, has been considered, not all of that evidence is listed in this Decision.

Issue(s) to be Decided

Have the Landlords submitted sufficient evidence to uphold the 1 Month Notice issued September 16, 2016?

Background and Evidence

The parties entered into a month to month tenancy agreement which began on August 10, 2015. Rent was payable on or before the first of each month and began at \$750.00 per month. On August 10, 2015 the Tenant paid \$375.00 as the security deposit.

The Landlords testified rent was increased to \$771.75 effective September 1, 2015. The Tenant disputed that submission stating he paid rent for August 1 – 10, 2016 based on \$750.00 per month and the remainder of August was calculated and paid at a daily rate based on the increased monthly amount of \$771.75.

The rental unit was described as being one of three self-contained suites in a single detached two level home. The Landlords and their Agent occupy a suite with private laundry facilities, which is located on the upper and lower levels of the house. There is a two bedroom self-contained suite with private laundry facilities on the lower level. The Tenant's rental unit is a bachelor suite with private laundry facilities located on the upper level of the house, directly above the two bedroom rental suite.

On September 16, 2016 the Landlords served the Tenant with a 1 Month Notice for cause via registered mail. The Tenant received that Notice on September 20, 2016. The Notice was issued on the prescribed form, pursuant to Section 47(1) of the *Act*, listing an effective date of October 31, 2016. The Notice was issued listing 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
 - Put the Landlord's property at significant risk
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The Landlords asserted the 1 Month Notice was issued to the Tenant due to reasons as summarized below.

(1) On-going noise disturbances since the onset of the tenancy which included the Tenant doing laundry after 10:00 p.m.; his loud, heavy footed, walking; and noise early in the morning. The Landlords argued they have had two tenancy agreements cancelled in the lower rental suite due

to noise caused by the Tenant and due to his heated responses each time a tenant from the lower suite tried to mediate the noise situation.

(2) Heated discussions between the Landlords and Tenants each time an issue was brought to the Tenant's attention. The Landlords asserted the Tenant is inconsiderate; uncooperative; has a disproportionate sense of entitlement; and is rude every time they approach him about an issue.

(3) The Tenant is conducting a business out of the rental unit and washing his work rags in their laundry machines. The Landlords have provided space for the Tenant's work ladders and a parking space for his truck since the onset of the tenancy agreement. They argued they were unaware that the Tenant was washing his rags in the washing machines and are concerned about chemicals going into their septic system. This past year the Tenant has had an employee park his personal vehicle on the street which is a concern for the Landlords as their insurance does not cover the operation of a business on their property.

(4) The Tenant removed the furniture from the furnished suite, packed it up and gave it to the Landlords to store shortly after moving into the suite. The Landlords asserted they did not give the Tenant permission to remove that furniture and questioned why he would rent a furnished suite.

(5) The Tenant has made advances towards their Agent and has asked her out on a date on more than one occasion. The Landlords put a lot of emphasis on this reason for issuing the Notice and asserted the Tenant broke their trust when he made advances to the Agent, who is the Landlord's daughter. The Landlords stated the Agent did not want any more communication with the Tenant. The Landlords had provided the Tenant with the Agent's telephone number as an emergency contact person and the Tenant had been communicating with her electronically since then; until she blocked his communications. Neither the Agent nor either one of the Landlords asked the Tenant to cease all communication with the Agent prior to issuing him the 1 Month Notice.

In support of their application the Landlords submitted copies of twenty "Caution Notice to Tenant" each of which described events or conversations which the Landlords asserted occurred between April 28, 2016 and October 29, 2016. The Landlords stated a couple of the early notices were served upon the Tenant individually and then the rest were served upon him in one or two bundles.

The Landlords submitted this tenancy was a "perfect storm" situation. They stated the final straw was when they went to deliver a parcel to the Tenant and saw the bags of rags outside of his door on July 20, 2016. They said that is when they found out he was doing his work laundry in their machines.

When advised that a material term of a tenancy agreement is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the tenancy agreement, the Landlords acknowledged they misinterpreted that reason on the 1 Month Notice. The Landlords then withdrew that reason for issuing the 1 Month Notice issued September 16, 2016 and wished to proceed with the Notice on the remaining two reasons.

The Tenant testified that he removed the Landlords' furniture and has stored his ladders at the rental unit, which the Landlords knew about and have accommodated from the start of his tenancy. He asserted he packed their possessions nicely in boxes for storage and was not aware that was an issue until being served the Notice.

The Tenant stated that he operates a window washing business where he washes windows at other locations not at the rental unit. He submitted he does wash a few rags and towels with his work clothes and that he does one load of laundry every two or three days. He submitted he uses dish soap when he cleans windows and regular laundry soap in the washing machine so he is not putting chemicals down the Landlords septic system. He stated he has always done that many loads of laundry since moving into the unit.

The Tenant confirmed he had been communicating with the Agent and that he had asked her for a hug and to go out on a date. He asserted he was never told not to approach her and he always had friendly conversations with her prior to being issued the 1 Month Notice. He stated he stopped trying to communicate with her once he was served the Notice.

The Tenant disputed the Landlords' submissions regarding service of the Caution Notices. He argued the first time he ever saw or received any of those notices was on September 9, 2016 when he received 25 or 30 notices in one package from the Landlords.

The Tenant acknowledged that there had been some disagreements in September 2016 regarding parking and his temporary placement of his ladders on the ramp entrance to his suite. He submitted that parking on the street was not the Landlords' property. He noted that use of parking on the roadside or street fell to the responsibility and management of the municipality or province, not the Landlords. Therefore, his employee can park on the street.

The Tenant confirmed that the lower tenant, N., had approached him regarding hearing him walk on the floor. He asserted the floor does crackle when he walks on it but that is not his fault that the lower tenant could hear that. He stated when she approached him he did not have time to talk to her so he ended the conversation quickly. He stated he was not approached by any other tenants regarding noise issues. He argued he works very long days which require that he gets up early. He stated he has done laundry after 10 p.m. sometimes but it is usually the dryer going after 10 p.m. and not the washer.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the *Act*. In addition, I find that the Notice was served upon the Tenant in a manner that complies with section 89 of the *Act*.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

In this case, the undisputed evidence included issues involving the Tenant operating his business, storing his ladders, parking his vehicle on the property, and removing the furniture from the suite; all of which have been going on since the onset or shortly after the start of this tenancy back in August 2015.

I concur with the Tenant's submission that the Landlords do not have authority to determine who parks on a public roadway and that he operates his business at the sites where he washes the windows. I note there was insufficient evidence to prove the Tenant's employee was conducting business at the rental unit; rather, the evidence was the employee parked his vehicle on the public roadway and left with the Tenant to go to work.

Furthermore, I do not accept the Landlords' submissions that the final straw was when they found out the Tenant had been washing his work rags and towels at the rental unit on July 20, 2016. If that were truly the case the Landlords would not have waited until September 16, 2016 to serve the Tenant the 1 Month Notice.

I favored the Tenant's submissions that he had not been served the Caution Notices individually as events occurred; rather, he received them in one package as evidence for this proceeding. I favored the Tenant's submissions over the Landlords' regarding service of those notices based on the Landlord's submissions that most of the notices were served in one or two lumps. Furthermore, after review of the content of those notices I found the content was clearly a record of every text message or communication between the parties which led me to believe they were written and/or served upon the Tenant all at once after an emotionally driven event or events; such as when the Landlords finding out the Tenant had been asking their Agent for a hug and to go out on dates with him.

There was insufficient evidence before me that would indicate the Tenant knew, or ought to have known that he would be evicted based on his previous actions. Furthermore, it was undisputed that neither the Agent nor the Landlords requested the Tenant to cease communications with the Agent. Accordingly, I uphold the Tenant's application and I cancel the 1 Month Notice to end tenancy issued September 16, 2016.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

Based on the above, I find the Landlords are estopped from evicting the Tenant at this time. I make this finding in part because the alleged inappropriate behaviors, excluding the Tenant's advances to the Agent, have been allowed to go on, unmanaged for over a year. It was not until recently, after the Landlords found out about the Tenant's advances to the Agent that those behaviors became a real issue for the Landlords; after which another tenant gave their notice and move out.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the Act.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce his rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is \$100.00.

Conclusion

The Tenant was successful with his application and the 1 Month Notice issued September 16, 2016 was cancelled. The Tenant was awarded recovery of his filing fee which may be deducted from his rent payment. The tenancy continues until such time as it ends in accordance with the *Act*.

This decision is final, legally binding, and 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: November 22, 2016

Residential Tenancy Branch