



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O (Tenants' Application)
 OPC, FF (Landlord's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord and the Tenants. The Landlord applied for an Order of Possession pursuant to a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), and to recover the filing fee. The Tenants applied to cancel the 1 Month Notice, and for "Other" issues namely to deal with alleged illegal entries into the rental unit.

The Landlord, the Landlord's wife, both Tenants, and an advocate for the Tenants appeared for the hearing and provided affirmed testimony. The Tenants confirmed receipt of the Landlord's Application and his documentary evidence by registered mail. The Landlord confirmed receipt of the Tenants' Application and their documentary evidence but stated that he was unable to view the Tenants' digital evidence served prior to this hearing. However, during the hearing, I determined that the Tenants' digital evidence related to repairs to the rental unit which was not a matter before me that the parties had been put on notice of. Therefore, I did not consider the Tenants' digital evidence in my findings.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence provided for this hearing, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Have the Tenants established that the 1 Month Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?
- Has there been an illegal entry of the rental unit by the Landlord?

Background and Evidence

Both parties agreed that this oral tenancy started approximately in September 2014. Rent is payable in the amount of \$650.00 on the first day of each month and no security deposit was requested by the Landlord.

The Landlord testified that he had served the Tenants personally with the 1 Month Notice on November 30, 2016. The 1 Month Notice dated November 30, 2016 was provided into evidence and shows a vacancy date of December 31, 2016. The reasons for ending the tenancy on the 1 Month Notice are as follows:

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 was informed that he bears the burden to prove the 1 Month Notice when it is disputed by the Tenant. As a result, I asked the Landlord to present evidence relating to the reasons to end the tenancy on the 1 Month Notice.

The Landlord's wife testified that the Tenant's actions have caused her extreme stress and anxiety which is in turn exacerbating her serious medical issues. The Landlord's wife explained that the toll of having to deal with these difficult Tenants which has now compounded is having an impact on their peaceful and quiet enjoyment.

The Landlord testified that the Tenants have allowed a friend to park a vehicle permanently outside of the rental unit which has blocked access to the driveway and that the friend does not reside at the rental unit. The Landlord testified that the male Tenant does not have a driving licence but confirmed that the vehicle is now gone.

The Landlord stated that all of his evidence for the reasons for issuing the Tenants with the 1 Month Notice is detailed in his two page written submissions provided into evidence. The Landlord was asked to present this evidence. The Landlord testified that the male Tenant has mood swings and has anger issues which often result in verbal altercations between the male Tenant and the Landlord and his wife.

The Landlord's wife testified that on December 25, 2016 they were at a different province when they heard from neighbouring renters of the Tenants that the police had been called to the rental unit. The Landlord's wife testified that this caused her extreme anxiety and spoiled their holiday plans for the duration of their trip knowing that there were issues with the rental unit they had to deal with on their return.

The Landlord testified that on December 4, 2016, the male Tenant called to ask the Landlord to go and check whether the rental unit door was locked and whether his personal items were still there because the Tenant had had a fight with the female Tenant and suspected that the female Tenant may have taken his television. The Landlord explained that he went to the rental unit and locked the door as it was open.

The Landlord testified that concerned for the safety and security of his rental unit, he attended the rental unit the next day and found that the door was again unlocked. However, when he opened the door he saw the people sleeping inside the rental unit so he quickly exited and left. The Landlord testified that the male Tenant appeared at his residence shortly after to confront the Landlord and his wife about his reasoning for entering the rental unit.

The Landlord testified that the male Tenant appeared with his friend and that they were aggressively accusing him of breaking and entering the rental unit. The Landlord explained that concerned for his safety, he barricaded himself in his residence with his wife to prevent any further altercation. The Landlord confirmed that he did not call police as the threat level he and his wife experienced did not warrant the calling of police.

The Landlord's wife stated that they don't feel safe in their residence and fear for their personal property and that the male Tenant's anger issues have escalated and gotten worse. The Landlord suggested that the Tenants and their friends are doing drugs and that this is contributing to the Tenants' aggressive and erratic behaviour. The Landlord explained that the Tenants also have friends who visit them who engage in drug activity as evidenced by their incoherent speech, rapid eye movement, and body jerking. The Landlord stated that other renters on the residential property have expressed concern that the Tenants and their friends are doing drugs. The Landlord's wife stated that she can provide a plethora of evidence to show the impact to her health through her medical records.

The Tenants confirmed personal receipt of the 1 Month Notice on November 30, 2016 but dispute the Landlord's evidence. The Tenant's advocate explained that the car parked at the rental unit address belongs to the male Tenant's grandmother who no longer uses it; therefore, the car is under the control of the Tenant as he has a driving licence to drive it. The male Tenant confirmed that the vehicle was not interfering with the Landlord's or the other renters' ability to park their vehicles but in any case it is now gone.

The Tenants' advocate explained that the Tenants were the ones that called on December 25, 2016 for a medical emergency because the male Tenant was having a heart attack. The Tenants' legal advocate pointed out that the police arrived to administer medical aid as first responders and not in response to a disturbance as alleged by the Landlord.

The Tenant explained through his advocate that he did request the Landlord to attend the rental unit on December 4, 2016 because he was not too sure that he had left the rental unit locked. The Tenant explained that when he went to his rental unit the next day, there was evidence that the Landlord had entered the rental unit instead of just locking the door because the dishes were done and plumbing work had been performed. The Tenant explained that the day after, on November 6, 2016, the Landlord entered the rental unit without any permission and started to shout out the male Tenant's name while the male Tenant was out getting coffee.

The male Tenant testified that he got frustrated because the Landlord had entered the rental unit without any notice or his permission and that he did go to the Landlord's residence to confront him about this. The male Tenant testified that there was a verbal altercation that did take place between the parties but the Landlord was just as confrontational as the male Tenant was. The male Tenant submitted that this was a verbal altercation only and not grounds to terminate a tenancy.

The Tenants' advocate pointed out that the male Tenant does suffer from anxiety issues and post-traumatic stress syndrome which makes him raise his voice but that this is not indicative that he has significantly or seriously interfered with the Landlord. The Tenants' legal advocate stated that the Tenant was frustrated that the Landlord was entering the rental unit of his own accord and was requesting remedy to this issue as the "Other" issue elected on the Application. The Tenants' advocate pointed out that the male Landlord's actions are causing stress and anxiety in the same way the Landlord is alleging it is impacting them.

The Tenants' advocate pointed out that the very fact the Landlord agreed to take a call from the Tenant and act on his instructions to check the rental unit is evidence that the deterioration in the relationship between the parties is not to the extent the Landlord testified to which is unsupported with evidence. The Tenants' advocate also pointed out that the Tenants do not take drugs and there is no evidence of this provided by the Landlords. The female Tenant stated that she was willing to take a urine test to prove this as evidence to support the lack of drug activity alleged.

Analysis

In relation to the form and content of the 1 Month Notice, I find it complied with the requirements of Section 52 of the *Residential Tenancy Act* (the "Act") and that it was served to the Tenant personally pursuant to Section 88(a) of the Act on November 30, 2016.

The Tenants confirmed receipt of the 1 Month Notice on the same day it was served and filed their Application to dispute it on December 8, 2016. Therefore, I find the Tenants disputed the 1 Month Notice within the ten day time limit stipulated by Section 47(4) of the Act. When a landlord issues a tenant with a 1 Month Notice and it is then subsequently disputed, the landlord bears the burden of proving the reasons on the balance of probabilities. Therefore, I must determine if the Landlord has met the burden by providing sufficient evidence to prove the reasons elected on the Notice as follows.

Firstly, I find that the Landlord relies heavily on disputed oral evidence provided by him and his wife. I find the Landlord failed to provide sufficient corroborating or supporting evidence to prove the reasons for ending this tenancy. With respect to the parking of the vehicle at the rental unit, the Landlord failed to provide sufficient evidence of how the vehicle parked was causing a significant disturbance to the Landlord; in this respect the Landlord failed to provide photographic evidence of the manner in which it was parked that caused hindrance to the Landlord and of any breach letter or warning given to the Tenants for the removal of the vehicle and the alleged obstruction it was causing.

With respect to the December 25, 2016 incident, I find there is not sufficient evidence before me that the police attended the rental unit for an actual disturbance caused by the Tenants. The Tenants provided a plausible explanation as to why the police were in attendance at the rental unit on that day and the Landlord failed to provide sufficient rebuttal evidence, such as a police report, to refute this.

With respect to the verbal altercation that took place between the male Tenant and the Landlord at the Landlord's residence, I acknowledge that the male Tenant's recourse for dealing with an alleged breach of entry by the Landlord should not have been dealt with by personally confronting the Landlord at this place of residence; that matter should have been dealt with by way of a breach letter issued to the Landlord by the Tenants. However, while I accept that the Tenant should not have pursued this course of action, I find the Landlord has provided insufficient evidence that the confrontation between the parties on that day went beyond that which was significant enough or serious enough to warrant the ending of the tenancy. I also base this finding on the fact that the Landlord acknowledged that he did not feel the male Tenant's actions warranted police action. In

this respect, I find the parties' evidence results in one word against the other and therefore, the Landlord has not met the burden of proof. I find the Landlord's evidence in this respect is no more compelling or conclusive than that of the Tenants' evidence.

I also find the Landlord presented insufficient evidence of drug activity by the Tenants. The Landlord failed to provide any corroborating evidence to support these allegations, such as police reports or witness statement from neighbouring renters who are alleged to have observed this alleged activity.

In this case, I am not prepared to accept evidence of the impact the incidents have caused to both parties' health as conclusive proof of the actual alleged incidents that were presented for reasons to end this tenancy in this hearing. That evidence alone would not be not sufficient to prove the 1 Month Notice. In this case, I find the oral evidence is not sufficient to end the tenancy. Therefore, I grant the Tenants' Application to cancel the 1 Month Notice dated November 30, 2016 and the tenancy will resume until it is ended in accordance with the Act. Accordingly, I deny the Landlord's request for an Order of Possession and to recover the filing fee.

I next turn my mind to the Tenants' Application for "Other" issues. The Tenants ask for remedy for the Landlord's alleged illegal entry into the rental unit. In this respect, I turn to Section 29 of the Act which details the circumstances of legal entry by a landlord into a rental unit. Specifically, Section 29(1) (f) of the Act allows a landlord to enter a rental unit without giving written notice if an emergency exists and the entry is necessary to protect life or property.

Based on the evidence provided by the parties, I make the following findings on the Tenants' Application for "Other" issues as follows. The parties disputed the reasons why the Landlord entered the rental unit on November 6, 2016. The Landlord claims to have entered because he was concerned about the potential for theft of the male Tenant's property, but the male Tenant disputes this stating that this was an illegal entry of the rental unit. I find the Tenants' evidence also results in one party's word against the others. In the absence of any other conclusive evidence to support the Tenants' oral evidence, I am not prepared to make a finding that the Landlord breached the Act in entering the Tenants' rental unit.

Rather, I find that with regards to the November 6, 2016 entry it is plausible that the Landlord entered the rental unit fearing that the male Tenant's property may have been stolen as the male Tenant had requested the Landlord two days prior to check the rental unit for this reason. While I accept that this situation alone may not fit into the category of an emergency situation, I do accept that based on the male Tenant's previous

request to check the rental unit, the Landlord's fear of the Tenant's property being stolen under these circumstances is credible.

However, I would caution the Landlord in relying on this provision of the Act in the future to affect entry to the rental unit. Therefore, I dismiss the Tenants' Application for "Other" issues and refuse to make an order with respect to entry of the rental unit, other than to caution the Landlord with respect to the written requirement a landlord has to take before entering a rental unit.

I would caution the parties that if this tenancy is to continue on a successful basis, the parties should endeavour to communicate in writing in an effort to avoid any physical interaction or consider the use agents on their behalf. This will avoid any confrontation and is an effective means to document all communication which may be essential to proving issues that may arise in this tenancy.

Conclusion

The Landlord has not proved the 1 Month Notice. Therefore the Landlord's Application is dismissed without leave to re-apply. The Tenants' Application to cancel the 1 Month Notice is granted. The Tenants' Application for "Other" issues is dismissed without leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 16, 2017

Residential Tenancy Branch