



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC RP RR

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;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application and evidence.

The tenant did not have an issue with the service of the 1 Month Notice to End Tenancy ('1 Month Notice'), which was served to him on November 22, 2016. Accordingly, I find that the 1 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This 6 month, fixed term tenancy began in November 2016, with monthly rent currently set at \$600.00 per month, payable on the first of each month. A \$300.00 security deposit was paid, which the landlord still holds. A copy of the tenancy agreement was not provided for this hearing.

The landlord issued the notice to end tenancy providing the following grounds: 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 landlord testified to the following during the hearing. The tenant broke the terms of the tenancy agreement by allowing his girlfriend to move in on November 15, 2016. The rental unit is intended to be single occupancy only, but the tenant had left the landlord a message around November 19, 2016 asking the landlord to allow the tenant to have his girlfriend reside in the rental unit with the tenant. The landlord submitted that noise carries within the building, and that the property manager resides next door to the tenant. The landlord testified that the property manager reported to him that there were sounds of the tenant walking around with boots on around 2 to 3 a.m.

The property manager was called as a witness and provided the following testimony. She testified that after the girlfriend moved in, she served the tenant with a 1 Month Notice, and also left messages on his machine. The landlord called another witness, MS, who played a recording during the hearing from the tenant to the property manager. This witness was present during these calls, and testified that the tenant would repeatedly call the property manager telling her to stay out of his life and mind her own business. He would call three to four times, and then leave a "nasty message".

The tenant is requesting that the 1 Month Notice be cancelled as he believed that the property manager's allegations against him were unjustified. He testified that he notified the property manager about mould in his unit, and that his fridge and stove were "no good", but she did not care. He also testified that he was not allowed to make any noise in the course of his daily living, such as flushing the toilet, or taking a bath. He submitted that the suite required better soundproofing, and is requesting an order to address these outstanding issues.

Analysis

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...*

(d) the tenant or a person permitted on the residential property by the tenant has...

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property...

Both parties provided oral testimony during the hearing in regards to the landlord's 1 Month Notice. The landlord called witnesses, and provided oral testimony that the tenant caused a disturbance to other occupants by making excessive noise. The tenant disputed this testimony, and maintained that the property manager did not care about the issues that he brought up in regards to the tenancy. The tenant maintained that the noise was produced in the course of his daily living. He believed that the excessive noise that the landlord referred to is a product of inadequate soundproofing, and not grounds for ending this tenancy.

As there is conflicting verbal testimony before me, and particularly because the burden of proof to justify ending the tenancy is on the landlord, I must turn my mind to what evidence was provided during this hearing to support the landlord's reasons that he provided in his 1 Month Notice.

In ending a tenancy for cause, the landlord has some obligation to ensure that the tenant understands what complaints and allegations have been lodged and the precise nature of the conduct that is expected, and this is usually done in the form of a written warning or notice. The tenant should also be made aware that unacceptable conduct may risk termination of the tenancy if it continues. In this case, no warning letters were provided by the landlord in evidence as part of this hearing.

While the tenant may have disturbed other occupants, including the property manager next door, I find that the landlord did not sufficiently prove that the tenant's conduct had reached the threshold where termination of this tenancy was necessary. The landlord made submissions in regards to a breach of the tenancy agreement by the tenant, who allowed his girlfriend to reside at the rental unit. As this was not one of the grounds provided on the 1 Month Notice, I cannot consider this allegation for the purposes of ending this tenancy.

Given the above, I find it necessary to cancel the 1 Month Notice. The tenant's application for cancellation of the landlord's 1 Month Notice is allowed.

The tenant made an application for orders requiring the landlord to make repairs to the rental unit, and allowing him to reduce rent for the repairs and services not provided. Although the tenant briefly referred to the need for repairs in his unit, and better soundproofing, the tenant did not provide further evidence to support his application. As such, I am dismissing this part of the tenant's application.

Conclusion

I allow the tenant's application, and the 1 Month Notice is cancelled. This tenancy is to continue as per the *Act*.

The rest of the tenant's application is dismissed.

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: January 30, 2017

Residential Tenancy Branch