



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMPBELL CONSTRUCTION
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, RR, FF

Introduction

This hearing dealt with the tenants' application filed on January 6, 2017 under the *Residential Tenancy Act* (the "Act") to cancel a 1 Month Notice to End Tenancy for Cause dated December 28, 2016 (the "Notice"). The tenants also sought orders allowing them to deduct the cost of repairs, services or facilities from the rent, compensation for damage or loss under the Act, regulation, or tenancy agreement, and return of the filing fee.

The tenants attended the hearing with a witness, whose testimony was not required. The owner's agent attended on behalf of the landlord. All parties gave testimony and were provided the opportunity to present their evidence orally and in documentary form, to make submissions, and to respond to the submissions of the other party.

Only the tenants' application to cancel the Notice was dealt with at the hearing. Rule 2.3 of the Residential Tenancy Branch's Rules of Procedure authorizes me to dismiss unrelated disputes made in one application. The tenants applied with respect to several matters, the most urgent of which was the application to set aside the Notice, and others which were not sufficiently related to required determination at this hearing. I have therefore only considered the tenants' requests to set aside the Notice and to recover the filing fee.

As I advised at the hearing, the balance of the tenants' application was dismissed, with leave to re-apply. Both parties were advised that the claims and responses to them should be more clearly quantified and substantiated at the next hearing.

Issues to be Decided

Should the Notice be cancelled?

Are the tenants entitled to the return of the filing fee?

Background and Evidence

It was agreed that there is no written tenancy agreement. Included in the tenants' evidence was an unsigned tenancy agreement with somewhat modified terms and with unrelated names inserted on the first page which the tenants say the landlord attempted to have them sign in 2016.

It was also agreed that tenancy began in May of 2014. Although there was some dispute as to when rent was originally payable, the parties agreed that rent in the amount of \$1000.00 is now payable on the first of each month. No security deposit was paid. The tenants are a couple and have a young child. They have had other roommates at times.

The landlord's agent testified that the residence, which is located in a somewhat rural area, was rented on an "as is" basis and on the understanding that the tenants would be responsible for some repairs and the landlord would supply the materials. He further testified that this arrangement worked well until relatively recently. The tenants alleged that the landlord has become less cooperative since they started asking the landlord to repair or provide another heat source.

The parties agreed that the Notice was served on the tenants on December 28, 2016. The Notice in evidence was unsigned, but the tenants confirmed that their copy was signed. The landlord's agent was asked to submit the signed copy of the Notice to the Residential Tenancy Branch by the end of the day of the hearing, and he did so.

The reasons stated in the Notice for ending the tenancy were that the tenants had:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk.

The Notice also alleged that the tenants had engaged in illegal activity that had or was likely to damage the landlord's property, and that the tenants had breached a material

term of the tenancy agreement and failed to correct the breach within a reasonable time after written notice to do so.

The tenants denied the reasons stated in the Notice.

Landlord's allegation of breach of a material term

The landlord's agent testified that the rental unit property is serviced by a well, has no garbage collection, is not connected to the municipal sewer system, and that power outages are common. As a result, one of the material terms of the agreement was that the tenants would dispose of their own garbage and not allow garbage to accumulate at the residence. This was important because of concerns around rodents. The landlord submitted a photo of an accumulation of garbage on the tenants' porch with handwriting indicating that the photo was taken November 20, 2016.

The landlord's agent also testified that another material term of the tenancy agreement was that the tenants would not leave abandoned or unlicensed cars on the property. He said that the tenants were allotted two parking spots and he did not want additional vehicles on the property because he had too many of his own around. Although there is no written tenancy agreement, the agent stated that this was discussed with the tenants at the beginning of the tenancy.

A notice from the agent to the tenants dated November 20, 2016 states "we require the removal of the pile of garbage stored on the back porch this is unhealthy and has attracted rodents" and "the unlicensed vehicle, it can stay if it is insured." Another notice from the agent to the tenants dated January 1, 2017 states: "this notice is to follow up on our request on dec 28, 2016 for the removal of unlicensed vehicle and clean up of your personal items, barbeque, ramps ect impeding the repair of sidewalk to front stairs" (reproduced as written).

Landlord's allegation of significant interference with or unreasonable disturbance of another tenant or the landlord

The agent also testified that the tenants had not responded to a phone call asking them to replace a shade on a light on their porch that they had removed and that shone into the bedroom of a cottage rented by another person on the same property. He further testified that he climbed up the wall of the rental unit to install something to shade the light and the tenants called the police in response.

The agent also said that the cottage tenant has been disturbed by the tenants' loud music. A letter from the cottage tenant was in evidence. It is dated December 23, 2016 and states: "The tenants have on many occasions been very disrespectful regarding noise and light levels. Quite often, when they leave, they start the vehicle and play loud music. Or when they home come the music is thumping and shakes the walls in my suite. . . ."

The agent testified that it was difficult arranging access for tradespeople with the tenants. Copies of notices to the tenants about these arrangements were in evidence. So too were texts from the tenants to the agent around the arrangements.

Landlord's allegations of serious threats to health and safety of others and/or to landlord's property

The agent also said that the male tenant has been confrontational with him. He testified that he was given written notice by the tenants on December 1, 2016 with respect to insufficient heat and other concerns (that letter was in evidence) and at that time the male tenant threatened him. The agent provided a letter from the cottage tenant dated January 29, 2017 in support of his testimony:

I was present and witnessed the Interaction between [tenant] and [agent] on December 01, 2016 and that In my opinion was threatening to [agent]. After [tenant] paid his rent he started walking up the stairs and was shouting comments to [agent]. I distinctly remember [tenant] on his Back Deck near his sliding door and way yelling at [agent] that he was going to send the "Hell's Angels" over to see him. (reproduced as written)

He was confrontational and would not stop talking in a confrontational manner no matter what [agent] tried to discuss. [Agent] had remained calm all throughout . . . (reproduced as written)

Another notice from the agent to the tenants dated December 1, 2016 includes (reproduced as written) includes this: "finally [tenant's] threatening behavior has caused concerns to the other tenants and must stop."

Another notice dated December 27, 2016 from the agent includes an allegation that the male tenant "threatened me with violence in front of . . . a tenant and this has made him uncomfortable affecting his sense of safety in his home this was reported to police and a file has been started (reproduced as written)." The landlord has not submitted any documentary evidence of police involvement.

The agent's December 27 notice also states that the male tenant has "constantly threatened the rental tenancy branch on us. Vindictively phoned the police and fire department who came and found nothing wrong yet he has discharged illegal fire works against our wishes and put the many out building in danger of fire (reproduced as written)."

The agent's notice of January 1, 2016 describes an incident on December 28 as follows: (reproduced as written):

now it appears you are trying to hinder any repairs you will not answer when phoned I have to post notice to get any response and then I get to listen to [tenant] make threats about what pay back he has planed . on dec 28 at 1pm I was working with my co worker . . . when [tenant] threatad me with bylaw for trees then with CRD over land use then proceeded to ask [name omitted] why he works for assholes.

A letter dated January 20, 2016 from the co-worker referenced above also describes the December 28 incident, stating that after the agent served notice on the tenants he could hear a male inside the tenants' home "making threats about bylaw and crd coming and [landlord] would pay coming from inside the house . . . he then came out and walked through the mud and commented he ruined his shoes and [agent] would pay, he came by one final time asking me how can I work for assholes (reproduced as written)."

The agent in his written submissions describes this incident as an "encounter with roommate . . . involving more threats and strange behavior walking in mud and commenting he ruined his shoes."

In his written submissions the agent says he received threatening texts from the male tenant (not in evidence) and that he reported the male tenant to the police on two occasions. He did not say that charges were pressed or submit any police reports. The agent did not raise this issue at the hearing.

The landlord's agent also submitted photos of some items, including a gas container and a tupperware bin, at the foot of the outdoor stairs, and photos of a bicycle and a barbeque that were in the way when the landlord wanted to remove a tree and repair a walkway, and which the agent said the tenants refused to move despite requests that they do so. He also alleged that there were items stored inappropriately in a storage/furnace room.

Lastly, the agent testified that the tenants had put the landlords property at risk by setting off fireworks at Halloween after being asked not to, and that the male tenant may have forced a locked door in order to show the electrical inspector attending at the property around.

Response by the tenants to landlord's allegations

In response to the landlord's allegations, the tenants say that they have been asking that the landlord address the heating issue in the rental unit for a long time. In November of 2016 they advised the landlord that if it was not addressed they would file an application with the Residential Tenancy Branch, and the landlord has been hostile since then. They said that the landlord's initial response to their request for heat was that they would be receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property. Both parties agreed that the landlord has since installed baseboard heaters in the rental unit.

In response to the landlord's allegations about garbage accumulation, they say that the photograph provided by the landlord of accumulated garbage was taken after they had carried out a big internal clean, and that the garbage was only on the deck for two days. A video recording from early December was in evidence from the tenants. The deck was clean in that video.

The tenants further said that the items at the bottom of the stairs were not a concern, and that the landlord had advised them that a fire official had noted them as a concern, but that when they investigated this with the official they were advised that this was not correct.

The tenants also say that the agent climbed the exterior wall of the house and screwed a board, rather than a shade, over the light that was said to be bothering the cottage tenant. The tenants also alleged that the board was mounted to block the tenants' surveillance cameras. They also point out that the landlord's agent did not give written notice of his intention.

Both tenants agreed that the discussion on December 1, 2016 was tense. However, both also deny that the male tenant threatened the landlord's agent. The female tenant described the interaction as "emotional and heated." She said that the agent appeared to be trying to provoke them, that he stood at the bottom of their stairs as they left to re-enter their home, and accused them of insurance fraud with respect to an unrelated matter. They also say that the cottage tenant, who wrote the letter referenced above stating that the tenant had threatened the agent, was not actually present at the time.

The agent then advised that the cottage tenant would have attended to testify but that he was at work. The tenants said in response that in fact he was outside of their residence running a machine in the yard at the time.

The tenants point to a video of the December 1, 2016 conversation to support their version of events. The agent had not reviewed the recording in advance of the hearing although it had been provided to him, but responded that it could have been edited to misrepresent the conversation.

I have reviewed the tenants' recording of the December 1, 2016 interaction. In the recording the agent tells the male tenant that the landlord will be serving the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenants challenge him on this, alleging that the tenant below was evicted on the same grounds and there is now no one living in the basement suite (there is a letter from the former basement tenant in evidence confirming the tenants' allegation here). At one point the agent does allege something about insurance fraud and a deer skull.

The male tenant is clearly angry in the video, but his anger is largely around not having heat and around what he describes as the agent's neglect of their concerns. Towards the end of the recording there is a sound which appears to be a closing screen door. Apparently then inside his home, the tenant complains aloud about the agent's allegation the tenants have committed insurance fraud.

There is nothing in the recording to suggest that the tenant threatened the landlord's agent and the cottage tenant does not appear to be present. Rather, the screen door is shut and the conversation is ended.

Also in evidence from the tenants is a recorded phone conversation from December 2 between the tenant and the agent. In the recording the male tenant states he is recording the conversation after having received the December 1 letter from the agent accusing him having been threatening. The recording makes clear that the relationship between the two is tense. In the conversation, the two arrange for heaters to be installed and discuss other matters. At one point the agent acknowledges that the tenants have some legitimate concerns with the conditions of the rental unit. He also says that these will be addressed. He further comments that the male tenant's behaviour has caused the cottage tenant concern.

At another point the agent says: "You know what did it, it was the promises of the rent and not coming through. And putting me in a bad position. That they finally got sick of it. You definitely have some complaints but you haven't always done what you said

either . . . I have been told many many times the rent is coming and I have actually some times paid your rent.”

Analysis

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch’s Rules of Procedure require the landlord to make his submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice. Based on the testimony and evidence before me, and on a balance of probabilities, I conclude that the landlord has not established that there is cause to end the tenancy.

The comment by the landlord’s agent during the telephone conversation with the tenant on December 2, reproduced above, is odd. It suggests the landlord may have had reason to evict the tenants for non or repeated late payment of rent. If that is the case, it is not clear why the landlord has not attempted to end the tenancy for this reason. It also suggests the agent at times may have paid the tenants’ rent on their behalf. It is not clear why this may have occurred.

No material breaches left uncorrected after written notice

Absent a written tenancy agreement, the landlord cannot easily establish that non-accumulation of garbage or storage of more than two or of uninsured vehicles were material terms of the agreement.

The fact that the landlord has only started to give notice of the concerns around the unlicensed vehicle is also consistent with the tenants’ submission that storage of vehicles on this rural property was not a material term. The property at issue is large and remotely located. By the agent’s own admission, and as shown in photographs provided by the tenants, there are many other old and clearly inoperable cars on the property. This also makes the alleged term unlikely to be a material term.

Additionally, even if non-accumulation of garbage were a material term, I do not accept that the tenants consistently allowed garbage to accumulate. There is no evidence from the landlord that this occurred more than once. The landlord submitted only one written notice asking the tenants to remove accumulated garbage. If there had been other incidents there would likely have been other warning letters. Based on a video in evidence from early December showing a clear deck, I accept the tenants’ evidence that this accumulation was out of the ordinary and that it was remedied within days of the landlord’s notice.

No significant interference with or unreasonable disturbance of another occupant or landlord

I accept that the tenants' porch light may have disrupted the cottage tenant for a period of time. I also accept that the tenants may occasionally play their music loudly when they leave or arrive in their vehicles. However, I do not find that any of this, even considered collectively, qualifies as a disturbance sufficient to end the tenancy. A light shining into another tenant's bedroom and loud music on occasion for a short period of time do not meet the test for "significant" or "unreasonable" disturbance. I also note that the only evidence of loud music is in the cottage tenant's December 23 letter. If noise were a significant concern there would probably be other letters from the cottage tenant to the landlord voicing his concerns, as well as notices from the landlord to the tenants about them.

No serious jeopardy to health or safety of another tenant, landlord, or to the landlord's property

The landlord's most serious allegation here is that the male tenant was physically threatening. However, the evidence is insufficient to establish that the tenants have seriously jeopardized anyone's health or safety.

Regarding the interaction on December 1, 2016, I find the female tenant's evidence that her partner did not threaten the landlord's agent most credible, in part because she conceded at the same time that the discussion was heated. Her testimony is also supported by the video recording in evidence. Based on that video, I find that the agent did advise the tenants that he would be serving them with a 2 Month Notice and that he did accuse them of an unrelated insurance fraud, as the tenants testified. Most significantly, I do not accept that threats were uttered by the male tenant. Although the male tenant is clearly angry, I do not find that he said or did anything during the December 1 interaction to seriously jeopardize the health or safety of the agent or the cottage tenant.

I make the same finding with respect to the November 28 incident. Although the tenant may have been upset or angry at receiving the notice, the nature of the "threats" described by both the agent in his written submissions and by the co-worker in his January 20, 2017 letter are around reporting the landlord to the municipal government or bylaw officers. These do not concern the physical safety of another person.

Although the agent alleges having been threatened by text by the male tenant, there were no texts in evidence and the agent did not raise this at the hearing. There is no any documentary evidence about police involvement with respect to any of the alleged threatening incidents.

Nor do I accept that the landlord's photo of minor clutter at the bottoms of the stairs was a fire hazard, or that the tenants' use of fireworks on Halloween was either illegal or hazardous. The landlord has submitted no documentary evidence with respect to any of the allegations around the fireworks. There is insufficient evidence as to their illegality, what the weather was like at that time, what type of fireworks were at issue, where they were set off as compared to the outbuildings, whether the landlord gave written notice of its concerns, etc.

Based on the landlord's failure to establish cause under s. 49 of the Act, I grant the tenants' application to cancel the Notice. The Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

The agent for the landlord was reminded at the hearing that it is the landlord's responsibility to have a written tenancy agreement. He was also reminded that landlords must issue receipts for cash rental payments.

The landlord is further reminded that parties cannot contract out of the Act, and that s. 32 of the Act requires that a landlord "provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant."

Conclusion

The tenants' application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

The tenants are authorized to deduct \$100.00 from a future month's rent payable to the landlord to recover the cost of the filing fee from the landlord.

The tenants' monetary claims are dismissed with leave to reapply. The tenants are advised to consider reorganizing and simplifying their evidence in support of their monetary claims. Both parties must resubmit and reserve all documentary evidence in support of any further applications.

This tenancy is clearly acrimonious. Both parties have raised many small matters that would not be of concern in a healthy tenancy. The parties are reminded that they can mutually agree to end a tenancy on terms and conditions negotiated between them.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: February 9, 2017

Residential Tenancy Branch