



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a One Month Notice to End Tenancy for cause; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for an Order for the landlord to provide services or facilities required by law; to allow the tenant to deduct the cost of repairs, services or facilities from rent; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenants' application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenants'

application to cancel the One Month Notice to End Tenancy for cause and I will not deal with the remaining sections of the tenants' claim at this hearing.

Issue(s) to be Decided

Are the tenants entitled to an Order to cancel the One Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenancy started on July 01, 2016. Rent for this unit is \$1,350.00 per month due on the 1st of each month. The tenants paid a security deposit of \$675.00 on July 01, 2016. The landlord testified that he lives in the basement unit beneath the tenants' unit

The landlord testified that the tenants were served a One Month Notice to End Tenancy for cause (the Notice) on February 20, 2017 by posting the Notice to their door. The Notice has an effective date of April 01, 2017 and provided the following reasons to end the tenancy:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *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.*
- 3) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (i) *Damaged the landlords' property*
 - (ii) *Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,*
- 4) *The tenant has caused extraordinary damage to the unit/site or property*

The landlord testified that the tenants have been repeatedly late paying rent. They pay by e-transfer each month and were late in August and October, 2016 and again in January 2017. Since the Notice has been issued the tenants have also been late with rent in April, 2017. The landlord testified that he never had any issues with the internet in his unit but was aware about problems the tenants had because they contacted him about it. Some days it seemed to work and others it did not. The landlord testified that if their internet was down there is an internet café just 500 yards away up the road.

The landlord testified that he has been disturbed by the tenants and woken at 6.00 a.m. in the morning when they get up and their daughter runs around jumping and screaming. The landlord has sent two text messages to the tenant concerning the noise and the tenant responds and says she has spoken to her daughter many times about it. The landlord testified that due to noise from their unit he has had to rearrange his sleep patterns for when the tenants go to bed. On one occasion the tenant's daughter was jumping and this caused a vent to fall out of the landlord's ceiling. Another text message was sent saying the noise was intolerable.

The landlord testified that the thermostat was set to a temperature agreed to by the tenants. The tenants change the temperature when it suits them causing the furnace to come on at 6 a.m. which causes it to get so hot in the landlord's unit that it wakes him.

The landlord testified that the tenant has also put the washing machine on when she goes to work as the landlord can hear the machine going from his unit. This has left wet washing in the machine all day which creates mould in the rubber seal. The tenants have been asked not to do this.

The landlord testified that with regard to the illegal activity; he is aware the male tenant has a licence to smoke medical marijuana and while this may not be illegal it is against the house rules to smoke inside the unit. The landlord testified that he has observed the male tenant standing at the sliding doors smoking with his arm outside when it is cold

when SM is not at home. The smoke comes into the landlord's unit through the shared vents.

The landlord testified that with regard to extraordinary damage; in the first month of the tenancy the landlord had to fix the latch on the gate, later one of the clothes line poles was broken and on another occasion someone fell upstairs and this caused four screws to pop out the ceiling drywall and a crack appeared. The male tenant came down to look at this damage and they agreed verbally he would pay to repair this.

The landlord seeks to have the Notice upheld and requested an order of Possession for the end of April, 2017 because the tenants have paid their rent for April.

The tenants testified that they share the internet service with the landlord and they have been having continued issues getting this service. When it was not working the tenants were not able to send their rent to the landlord. The landlord was aware the tenants were having issues and when the rent was due if the internet was down the tenant always sent the landlord a text message to inform him the rent would be late. The tenants testified that they live in a remote area and it is too far to go to the bank if they find their internet is not working on the first of the month. The tenants referred to their documentary evidence showing one text message sent to the landlord on August 05 informing the landlord that the internet was down.

The tenant SM testified that their daughter is normally very quiet. There has only been one occasion when she had a birthday party and one when she had a play date that there have been other children at the unit. The landlord was informed of this in advance. This is normal living noise in a household who has a child. The landlord's complaints are exaggerated; if the landlord can hear everything from their unit above then the two units are not sound proofed properly for joint living. Further to this the tenant's daughter is often away for six months at a time or for three month periods.

SM testified that when there were cold spells of minus 20 degrees it was so cold they did have to turn the thermostat up to 22 degrees. This is not unreasonable when living in this sort of environment. The tenant agrees the thermostat was set at the start of the tenancy but the landlord must have entered their unit as it was turned down again. The only time the tenants changed it was when it was excessively cold. Sometimes the landlord would just turn off the heating in his unit and then the temperature in the tenants' unit would drop to 16 degrees. The tenant referred to text messages sent to the landlord asking him to turn the heat up a degree because her daughter is cold.

SM testified that they have separate laundry facilities in their unit and do not leave wet clothes in the washer. When they moved in the landlord asked them to keep the door open to prevent mould and that is what they do. On one occasion their daughter put dry clothes in the washer and closed the door by mistake. The tenant disputed that she has time to do laundry in the morning while getting her daughter ready and herself ready for work.

SM testified that her husband has a license to smoke medical marijuana. He does not smoke it in the house and has an area outside to smoke. This was disclosed to the landlord when they rented the unit. SM testified that her and her husband have the same work schedule and are always home together. Her husband knows she does not like smoking in the house and so would not do it. Even if they go somewhere they always go together.

SM testified that they have not caused any extraordinary damage to the unit. Every home will have maintenance issues and suffer from normal wear and tear. The tenants disputed that they broke the latch on the gate and testified that it was the landlord's dog that they looked after who pulled down the washing line pole. It was her husband who told the landlord about this. SM testified that on one occasion her husband fell while moving a coffee table. He went downstairs after receiving a text from the landlord and saw a nail had come out of the ceiling. SM testified that if someone falling can do damage to the ceiling downstairs this brings into question the soundness of the house.

BC testified that he actually saw two screws that had come out of the ceiling and a crack. This was a little further away from where he had fallen upstairs. He did say he would sort something out with the landlord but the landlord has made a big deal over it.

The landlord asked SM if she said her daughter had only been loud twice. SM responded yes. The landlord asked if he has sent text messages and verbally spoke to SM about this. SM responded that the landlord sent two text messages and he may have made a passing comment at other times.

SM asked the landlord why he included a number of complaints on the Notice that were not true such as illegal activity and extraordinary damage. The landlord responded they are truthful; it is against the house rules to smoke inside and he wanted to have the damage documented.

Analysis

The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

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. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy. With this in mind I have considered the evidence before me and address each part here:

Late payment of rent – While I accept the tenants have paid their rent late on three occasions at the time the Notice to End Tenancy was served I am not satisfied that this is entirely the fault of the tenants. The landlord provides the tenants with internet service and clearly the tenants have had issues with this service working regularly. The landlord accepted e-transfer as the accepted form of paying the rent and the tenants have not been able to comply with this when their service is down and they live in a remote area.

It is therefore my decision that this is not sufficient cause to end the tenancy. I do; however, caution the tenants to ensure the rent is paid on the first of each month and if the internet service is not working it must be paid by some other means.

Significantly interfered with or unreasonably disturbed the landlord – this is a shared living situation and as such the landlord must expect to hear noise from the tenants' unit when they go about the course of normal living. It is difficult to ask a child of any age to comply with noise reduction as they do not have the same understanding as adults do. It was the landlord's choice to rent this unit to the tenants knowing there was a child and as such must expect some noise from that child. I am not satisfied from the evidence before me that the tenant's child has caused continually disturbances to the landlord that go beyond normal living noise with the exception of her birthday and one other occasion. I do however caution the tenants to be mindful of any noise their daughter may create that is above normal living noise and to teach her accordingly; I am not satisfied that the tenants using their washer can be considered a disturbance to the landlord just because he has the unit beneath the tenants' unit.

The landlord has also complained about the tenants adjusting the thermostat. There is nothing in the tenancy agreement that restricts the tenants from making small adjustments to the heat in their unit when it is considerably colder outside. The landlord must be reasonable in his demands that the heat is kept at a lower temperature. I find that these reasons indicated are not sufficient to end the tenancy.

Illegal activities – If the tenant has a license to smoke medical marijuana then this cannot be considered an illegal activity. The landlord has testified that it is the rules of the house that smoking is not permitted inside the unit and I have insufficient evidence from the landlord to show the tenant has smoked marijuana inside the upper unit. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. Consequently I find there is insufficient evidence based on this reason to end the tenancy.

Extraordinary damage – I have considered the damage described by the landlord and find this would not be considered to be extraordinary damage. There is insufficient evidence to show the tenants damaged the latch on the gate or the washing line pole and although the tenant agreed he fell on the floor I am at a loss as to how hard he would have to fall without injury to himself to cause screws to pop out of the drywall and to crack a ceiling. In any event even if this damage was caused by the tenant falling over it is not extraordinary damage. Consequently, this reason is insufficient to end the tenancy.

I find in favor of the tenants' application to dispute the Notice. The Notice is therefore cancelled.

As the tenants have been successful they are entitled to recover their filing fee of **\$100.00** and may deduct that amount from their next rent payment when it is due and payable.

Conclusion

The tenants' application is allowed. The One Month Notice to End Tenancy for Cause dated February 20, 2017 is cancelled and the tenancy will continue.

The tenants are at liberty to file a new application for the remainder of their application not heard today if the matter cannot be resolved with 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: April 05, 2017

Residential Tenancy Branch