



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 by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on April 28, 2017 to cancel a One Month Notice to End Tenancy for Cause (the "Notice"), and to recover the filing fee.

Both parties appeared for the hearing and provided affirmed testimony. The Landlord confirmed that he had received the Tenant's Application and her written submissions prior to the hearing by registered mail. The Landlord confirmed that he had not provided any evidence prior to the hearing.

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 evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

Has the Tenant established that the Notice ought to be cancelled?

Background and Evidence

Both parties agreed that this oral tenancy started on October 15, 2015 on a month to month basis. Rent in the amount of \$650.00 is payable by the Tenant on the first day of each month. The Tenant paid a \$375.00 security deposit at the start of the tenancy which the Landlord still retains. The parties confirmed that there were not rental arrears in this tenancy and that the Tenant had paid rent for June 2017.

The Tenant confirmed receipt of the Notice on or about April 26, 2017 which was sent by the Landlord using registered mail. The Notice dated April 19, 2017 was provided into evidence and shows a vacancy date of May 31, 2017. The reasons elected on the Notice for ending the tenancy were because the Tenant is alleged to have repeatedly paid rent late and has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlord was asked to present his evidence with respect to the two reasons on the Notice as he had the burden to prove the Notice.

The Landlord testified that the Tenant had habitually paid rent late throughout this two year tenancy. The Landlord was unable to provide specific dates the Tenant had paid rent late but explained that the Tenant was not willing to provide postdated cheques and that every month he had to chase the Tenant for rent. The Landlord testified that the Tenant had provided cheques late for the months of January and March 2017.

The Tenant disputed the Landlord's testimony stating that she was only late paying her rent on one occasion in this tenancy and at that time the Landlord did not have any issue with it or has not issued her with any warnings about late payment of rent.

The Tenant denied that she paid her rent late to the Landlord for January and March 2017 stating that she gave him cheques for these months on the first day of each month. The Tenant stated that the Landlord has complicated things by coming to the Tenant for the rental payment thereby setting precedence that he collects rent on the first day of each month.

With respect to the second reason on the Notice, the Landlord testified that due to a malfunction of the water pump system, the Tenant harassed, hounded, and bullied him into getting the repair done. The Landlord stated that he dealt with the repair issue as quickly as he could but the Tenant kept threatening him that she would move to a hotel and charge the costs back to him and that she wanted to move into a larger suite which she was not permitted to do. The Landlord testified that this made his life hell.

The Landlord testified that the Tenant continued to harass him by telling him what landscaping he could undertake at the rental property. The Landlord testified that the Tenant was being hostile to other tenants and has been belligerent to the Landlord on several occasions. The Landlord stated that the Tenant called him at 11:40 p.m. to complain of a tenant moving a chair upstairs. The Landlord stated that the Tenant is not picking up dog feces after her pet and is leaving garbage in the backyard after she was asked to remove it. The Landlord testified that the Tenant is refusing to allow the Landlord to do major renovations to the rental unit. The Landlord confirmed that he had not given the Tenant any written breach letters for these issues. The Tenant disputed the Landlord's evidence stating that she has not been hostile to the Landlord or other occupants and she certainly has not harassed the Landlord. The Tenant stated that she was simply asking for the repairs to be done to the water pump as she needed to shower for her work. The Tenant denied that she had told the Landlord what landscaping he could do. The Tenant stated that she did want to move into a larger suite and was upset that the Landlord did not allow her to rent it, but there was no harassment on her part as alleged by the Landlord.

The Tenant stated that she did call the Landlord late at night but when she realised it was late she put the phone down. The Tenant stated that she was calling to make a noise complaint

about a loud conversation the neighbouring tenants were having and not about a chair moving. The Tenant explained that when she hung up, the Landlord called her back and only then did she point out her complaint.

The Tenant testified that for the first month she did not pick up after her dog because she was missing it, but since that time, the Tenant has been diligently picking up after her pet. The Tenant stated that she had a verbal altercation with the Landlord who wants to do major renovations to the rental unit. The Tenant stated that the Landlord had already undertaking renovations during the tenancy and she wanted no more to be done. The Tenant explained that if the Landlord wants to do major renovations then he should have issued her with the property notice to end tenancy and not the Notice that is subject to this dispute. The Tenant stated that she has not been belligerent or hostile to the Landlord.

Analysis

Firstly, I find that the Landlord served the Tenant with a Notice that complied with Section 52 of the Act and I accept that the Tenant received the Notice on April 26, 2017. Secondly, I find that the Tenant made the Application to dispute the Notice within the 10 day time limit provided for by Section 47(4) of the Act. When a landlord issues a tenant with a Notice for the reasons in this case, the landlord bears the burden of proof in proving the reasons on the Notice disputed by the tenant.

With respect to the allegation that the Tenant repeatedly paid rent late, I find the Landlord has failed to provide sufficient evidence to prove this. The Landlord did not provide any corroborating evidence to show that the Tenant had paid rent more than the one occasion that the Tenant agreed to. There is also insufficient evidence before me that the Landlord addressed the issue of alleged late payment of rent either with a notice to end tenancy for unpaid rent or a breach letter that would have put the tenant on notice of any late payment of rent. Therefore, as the Landlord has failed to show that the Tenant paid rent more than once in this tenancy and that rent payments took place over a period of time that could be considered consistently late, I find the Landlord has not proved this reason on the Notice, which I hereby dismiss.

With respect to the second reason on the Notice, I also find the Landlord has failed to meet the burden to prove that the Tenant's actions went above and beyond that of significantly or unreasonably disturbing the Landlord or other tenants. The Landlord relied solely on his oral testimony as evidence for these reasons and such disputed allegations would have required the need for documentary or corroborating evidence such as witness statements, complaint letters, video footage, photographic evidence, breach letters, or witness testimony. None of these were before me. Without this evidence, I find the Landlord's oral evidence results in one party's word against the others.

Having examined the evidence before me, I find the Landlord has failed to satisfy me that the Tenant's requests for repairs to the water pump or the phoning of the Landlord on one occasion

to make a noise complaint without malice went above and beyond that of what I would consider harassment. The Landlord served no breach letters to the Tenant that would have given merit and credibility to the Landlord's allegations. If the Landlord wants to do major renovations to the rental unit and the tenant denies this, the Landlord has relief under the Act to issue a notice to end tenancy.

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 must fail.

In this case, I find that the Landlord's allegations are not supported or corroborated in a way that they can be relied on for me to uphold the Notice. Therefore, I find that the lack of any documentary evidence does not convince me that the Landlord has met the burden of proof in this case. I find the Landlord's evidence is no more compelling than the Tenant's evidence. As a result, I cancel the Notice dated April 19, 2017.

As the Tenant has been successful in cancelling the Notice, pursuant to Section 72(2) (a) of the Act the Tenant may recover the \$50.00 filing fee by deducting it from a future installment of rent. However, the Tenant indicated that she may be voluntarily leaving this tenancy at the end of June 2017. Therefore, in the alternative, the Tenant is issued with a Monetary Order for \$100.00 which may be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment.

Conclusion

The Tenant's Application is granted and the Notice dated April 19, 2017 is cancelled. The tenancy will continue until it is ended in accordance with the Act. The Tenant is awarded to recovery of her filing fee.

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: June 09, 2017

Residential Tenancy Branch