



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC FF

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 pursuant to section 47; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlords confirmed receipt of the tenant's Application for Dispute Resolution package and evidence packages. The tenant confirmed receipt of the landlord's evidence package.

Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause be cancelled or are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order that the landlords comply with the Act?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy began on April 1, 2009 and has continued on a month to month basis for 9 years. The rental amount of \$550.00 is payable on the first of each month. The tenant did not pay a security deposit to this landlord. The current landlords took possession of the rental property in June 2016.

On May 5, 2017, the landlord issued a 1 Month Notice to End Tenancy for Cause with an effective date of July 1, 2017 ("1 Month Notice") to the tenant. That notice claimed the following grounds;

Tenant is repeatedly late paying rent.

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenant filed to dispute the notice. The tenant also applied to have an order that the landlord relocate his truck (park it in a different location) and recover his filing fee for this application from the landlord.

The landlords testified that they have asked him to smoke outside but they are not sure that he always does. The landlords testified that the tenant bothers them by drinking, becoming drunk and by smoking outside but too close to the house. The landlords testified that sometimes the tenant plays his music too loud and therefore they have to ask him to lower the volume. The landlords testified they reside in the upstairs rental unit and that the tenant is disturbing them on an ongoing basis. The landlords testified that, during the tenancy the tenant left for approximately 2 months but his car stayed in the driveway.

The tenant testified that he accommodates any requests that he receives from the new upstairs neighbours (the landlords) regarding noise. He testified that, when he is asked to turn his music down, he does so – even when they ask at 9:15 p.m. He testified that he does not smoke on the premises and he does not drink excessively. He testified that he left for 2 months to care for his very sick child who is out of country. The tenant provided undisputed sworn testimony that his car was not parked in such a way that it blocked anyone from coming or going to the residence.

The tenant testified that he currently lives alone and has been a tenant at this unit for 9 years. He testified that he works full time and that he never gets noise complaints from any other neighbours within or outside of the building. He testified that he believes that the landlords are trying to get rid of him so that they can increase the rent they charge in the unit. He testified that the latest method they have employed to convince him to move is parking the landlord's very large truck in front of his main window to outside. He submitted a photograph to show the size of the truck and that it blocks most light to the rental unit. He sought an order that the truck be moved.

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the notice and the end of tenancy based on the grounds supplied. It is the landlords' obligation to show that in this instance, on a balance of probabilities, the

tenancy should end. In the case of a 1 Month Notice to End Tenancy for Cause, the landlord must *prove* the elements relating to the grounds given on the notice. In this case the landlord is obliged to prove that the tenant has; paid rent late repeatedly; has unreasonable number of occupants in the rental unit; or has or has allowed a guest to significantly interfere with or unreasonably disturbed another occupant or the landlord.

I find that the landlord did not submit sufficient evidence to support the claim that the tenant has caused an unreasonable disturbance to another occupant or the landlords. I find that the landlords' testimony lacked consistency while the tenant was calm and candid in his testimony. I find that the landlords' testimony does not provide sufficient evidence on the ground that the tenant or the tenant's guest significantly interfered or unreasonably disturbed another occupant.

I find that the landlord did not submit sufficient evidence to support the claim that the tenant allows an unreasonable number of occupants in his room. I accept the testimony of the tenant in general. I found his testimony credible in both its delivery and in its content. The tenants testified that he lives a mainly solitary life.

The parties agreed that there is no written tenancy agreement. In support of his claim that he regularly and consistently pays the rent, the tenant submitted a copy of a letter from the previous landlord who stated that he considered the tenant to be an excellent tenant. The tenant also submitted copies of previous rent receipts indicating that he occasionally paid rent in advance and always paid by the 6th of the month but for January 2017 when he paid rent on the 11th. The tenant gave undisputed testimony that he has consistently paid rent on or before the 6th. If the landlord was to seek to end this tenancy for repeatedly late rent, the landlord would have to show the agreed upon date for payment of rent was different than that stated by the tenant and evidenced by his cheques and receipts. As well, the landlord would have to show that the tenant paid rent late on at least 3 recent occasions. As the landlord has not provided any evidence to prove when the tenant was required to pay rent or that the tenant paid rent after the required date, I find that the landlord has also not proven that the tenant repeatedly pays the rent late.

In all of the circumstances and based on the evidence before me, I find that the landlord has not, on a balance of probabilities, provided proof that there is sufficient cause to end this tenancy. Therefore, I cancel the 1 Month Notice to End Tenancy. The tenancy will continue.

Given the clear evidence of imposition of the landlords' van into the rental unit of the tenant, given the undisputed photographic evidence showing the light from outside

blocked from entering the tenant's rental unit and given that the evidence at this hearing was that there are other areas for the landlord to park his truck, I order that the landlord park elsewhere and not park in front of the windows of the tenant.

As the tenant has been successful in his application, I find that the tenant is entitled to recover the \$100.00 filing fee for this application from the landlords.

Conclusion

I grant the tenant's application to cancel the 1 Month Notice to End Tenancy. The tenancy shall continue.

I order that the landlord park elsewhere and not park in front of the windows of the downstairs tenants' rental unit.

I issue a monetary order to the tenant against the landlord in the amount of \$100.00 to recover the cost of his filing fee.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 26, 2017

Residential Tenancy Branch