Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC

Introduction

This hearing was convened to deal with cross-applications under the *Residential Tenancy Act* (the "Act"). The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause dated May 29, 2017 (the "1 Month Notice"). The landlord applied for an order of possession based on the 1 Month Notice and for recovery of the application filing fee.

The landlord attended with his daughter as his representative. The tenant attended with her mother as her representative. Both parties had full opportunity to be heard, to present affirmed testimony, to make submissions, to present documentary evidence, and to respond to the submissions of the other party.

Service of the applications and notices of hearing was not at issue. Both parties also acknowledged having received the evidence of the other party.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the landlord entitled to an order of possession?

Is the landlord entitled to recover the application filing fee from the tenant?

Background and Evidence

A copy of the tenancy agreement was in evidence. This tenancy began June 1, 2015. Rent is $1,050.00 monthly and due on the first of each month. A security deposit of $525.00 was paid at the beginning of the tenancy and remains in the landlord's possession.

It was agreed that the 1 Month Notice was served on the tenant on May 31, 2017. The 1 Month Notice indicates that the tenant: (a) has breached a material term of the tenancy agreement and failed to correct that breach within a reasonable time after written notice; (b) has not done required repairs of damage to the unit; and (c) has significantly interfered with or unreasonably disturbed another occupant or the landlord.

(a) Breach of a material term not corrected after written notice

The landlord alleges that the tenant, BC, has breached a material term of the tenancy agreement by keeping a cat without written authorization. Clause 18 of the tenancy agreement requires that the tenant secure the landlord's written permission before keeping a pet. It also states that this is a material term of the agreement.

The landlord's daughter, SM, testified that she and her father spoke with the tenant at the beginning of the tenancy and went over this clause of the tenancy agreement and that it was made clear to the tenant that written permission and a deposit would be required if the tenant chose to have a pet in the future.

The landlord wrote the tenant a letter dated September 22, 2015 about various issues, including visiting dogs. In that letter the landlord stated: "Please, no overnight pets unless you are willing to pay a pet deposit and list a roommate on your agreement. As per the tenancy agreement there should be no pets inside your suite." That letter was in evidence, as was a caution notice issued by the landlord on the same date for an alleged breach of a material term based on the visiting dogs.

The landlord submitted a Facebook post from November of 2016. In that post the tenant shares that she has a new kitten. SM further testified that the landlord was unaware that the tenant had a cat until after the landlord served the tenant with the 1 Month Notice under consideration today. Until then, SM believes, the tenant had been keeping the cat hidden when the landlord conducted inspections. The tenant's upstairs neighbours also told the landlord about BC's cat.

SM acknowledged that the landlord has not issued the tenant written notice of this breach. However, she says that the September 2015 letter about visiting dogs suffices.

LS on behalf of the tenant says that the suite was advertised as pet-friendly, and that the prior and current upstairs tenants have cats. The tenant is not at the rental unit more than about four nights per week, and that the cat travels to the homes of her mother and her boyfriend, so she was not hiding it during inspections. However, the

tenant recognizes she has breached the agreement and is prepared to “make that right.”

(b) Failure to repair damage to the rental unit after a reasonable amount of time

SM stated that the tenant has failed to repair a damaged window screen after written notice to do so. Photographs of the screen were in evidence. SM alleges that the damage to the screen is preventing the screen from serving its purpose. The landlord’s evidence included a letter dated January 30, 2017 and a caution notice dated May 4, 2017, both requiring the tenant to replace the screen.

SM further stated that the tenant’s response to these requests is that the screen can be repaired when she vacates with money from her security deposit.

In written submission the tenant characterizes the damage as “slight and cosmetic.” At the hearing LS stated that the window screen is not badly damaged and still fits into the window. LS also said that the window is not usually opened, and that even if it were opened, the screen would still serve its purpose. LS acknowledged that her daughter has not made the screen a priority.

(c) Unreasonable disturbance of another tenant or landlord

SM also testified that the prior tenants in the unit above BC were “driven out” by BC’s “constant” running of her bathroom fan. BC’s bathroom is directly below the master bedroom of the upstairs rental unit. SM stated that the prior upstairs tenants were long-time family friends and that she works with one of them. BC’s use of her bathroom fan created such difficulty that the upstairs tenants left and their relationship with SM was negatively affected.

The landlord replaced the timer on the fan. This appears to have occurred around April of 2016. SM says that BC turns the fan back on as soon as the timer turns it off, and that this continues to disrupt the new upstairs tenant, CM, who is a relative of the lanlord. A letter dated June 30, 2017 (after service of the 1 Month Notice) from CM states in part as follows:

> I have been living in the upper suite since last August. My experience so far has been challenging and uncomfortable as [BC] decided to start messaging me through social media and harassing me whenever she has issues. We have never been friends and I have asked her to stop messaging me but she still

> continued to the point where I needed to block her access . . . Recently, since her eviction notice, she has deciding to start turning on the bathroom fan continuously through out the night as she is well aware it can be heard in the master suite upstairs . . . On top of all the harassment, she yells at her child throughout the night on a continuous basis when she has him, disrupting our sleep. I am not comfortable living in the same house as [BC] as she has proven to be spiteful, vindictive, and a problem causer to me and my family.

SM also testified that BC messages CM rather than the landlord about issues for which the landlord is responsible, for example that the washing machine is not working. SM complained that BC messaged CM when he first moved cautioning him against partying in his suite.

The landlord's evidence also included a screen shot of communication from BC to the landlord in May of this year that states in part: "And your grandson messaged me about the hot water tank first so me messaging them doesn't mean . . . ".

SM also testified that "most of the time" the tenant yells or cries at the landlord, or sends someone else to yell on her behalf.

The landlord wrote the tenant a letter dated April 9, 2016 about an incident occurring on April 4, 2016. In that letter the landlord states: "I knocked on your door yesterday simply to discuss the above [the installation of a separate timer switch for the bathroom fan] . . . I apologize for upsetting you by knocking on your door but I do not deserve that kind of treatment especially as I am trying my best to help you resolve the issues you and the tenants upstairs have with eachother . . . " (reproduced as written).

SM further testified that on May 24, 2017 the tenant sent someone else to argue with the landlord about an issue around garbage disposal. A caution notice about this incident was in evidence, stating in part: "Sending a friend of yours to confront Landlord regarding your tenancy agreement . . . As I did not know the gentleman you sent to confront and disturb me on your behalf . . . it was inappropriate and the manor in which he spoke was extremely unpleasant . . . (reproduced as written)." This notice is dated May 4, 2017 although the incident it describes is dated May 24.

A letter dated June 12, 2017 (also after service of the 1 Month Notice) from the landlord to the tenant was also in evidence: "Due to the disrespectful manor in which you treat me in person and over the phone, I would appreciate it if from now on you would communicate via email only. There have been more than a few occasions that you

have yelled at me angrily including last week when you called to scream at me refusing to vacate by June 30, 2017. . . " (reproduced as written).

Both parties referenced another disagreement about the cost of hydro. SM stated the tenant approached the landlord, crying, about the amount of her hydro bill and complained that she could not afford it, and the landlord out of sympathy gave the tenant $350.00.

In response to the landlord's allegations that BC has unreasonably disturbed others, LS observed that the landlord has not included any evidence of the tenant's communication with her current upstairs neighbour. Also missing is any evidence from the prior upstairs tenants. LS acknowledged that CB "can get excited," but says that the landlord is himself excitable.

LS also stated that the current upstairs tenants have communicated with BC so the messaging is not one-way. In her written submissions the tenant says she does not have the phone numbers for the upper tenants and cannot therefore be texting them. They have messaged one another through Facebook but the tenant does not feel any of the communication was offensive or harassing.

LS acknowledged that in light of CB's work schedule and parenting responsibilities she does sometimes take a shower late at night, and she does turn on the fan then.

BC said that she did not receive the May 24 notice from the landlord, and did not send her boyfriend to yell at the landlord on her behalf. Rather, she was with her boyfriend when they had the conversation with the landlord.

LS said that BC is young and that for "higher level problems" she can be involved in the communication.

Analysis

(a) Breach of a material term not corrected after written notice

Residential Tenancy Branch Policy Guideline # 8 states that whether a term is material must be considered by the arbitrator. A term is not necessarily material even if the tenancy agreement says that it is, and the same term can be material in one context and not another.

Here, I cannot accept that the clause requiring the tenant to secure written permission to have a pet is material in light of the fact that the other tenants have cats, the unit was advertised as pet friendly, and the landlord wrote the tenant in 2015 advising that no pets were allowed inside her unit without a pet deposit. In these circumstances written authorization from the landlord would likely been forthcoming had the tenant asked for it. The landlord's main concern is that the deposit is paid.

Additionally, the landlord has not given the tenant written notice of the breach or reasonable time to correct the breach. The Act requires that the landlord give the tenant both. This is so that the tenant has advanced notice of the breach and the opportunity to correct it. The 2015 letter about the visiting dogs does not suffice. It merely reiterates what is in the tenancy agreement. Even if I accepted that clause 18 is a material term, which I do not accept, the tenancy could not end without written notice of the breach and an opportunity to correct it.

Although the tenant may have been careless or irresponsible in failing to ask for advance permission and paying the pet deposit, I cannot accept that the tenancy should end on this basis.

(b) Failure to repair damage to the rental unit after a reasonable amount of time

Section 47(1)(g) of the Act allows a landlord to end a tenancy where the tenant has refused to repair damage to the rental unit within a reasonable time. The landlord has asked the tenant to repair the window screen twice.

The tenant should take the landlord's requests seriously. Cooperation is almost always the more constructive approach. Based on the landlord's photos, however, I accept the tenant's submission that the damage to the screen is slight and cosmetic and has not rendered the screen, which has been remounted, useless.

The tenant has complied with all other requests by the landlord, including garbage storage, but appears to believe that the slightly bent window screen qualifies as "reasonable wear and tear" which, under s. 32(4) of the Act, she would not be required to repair.

However, even if the bent frame is better characterized as "damage" than "reasonable wear and tear," the tenant has not in my opinion failed to repair that "damage" within a reasonable amount of time. The damage is minimal. Accordingly, the repair is not at all urgent. A considerable amount of time can reasonably pass before the repair must be

made. The tenant has stated that she will address the window screen repair now and she should do so.

(a) Unreasonable disturbance of another tenant or landlord

Section 47(1)(d)(i) of the Act allows a landlord to end a tenancy for cause where the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord alleges that the tenant's "constant" running of her bathroom fan caused the former tenants to leave. However, there is no evidence from the former tenants in support of this allegation. Additionally, if the prior upstairs tenants actually vacated because of this issue, then the landlord could have brought this application at that point.

Section 32(1) of the Act requires the landlord to provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law, and makes it suitable for occupation, having regard to the age and character of the unit. The landlord is also responsible to safeguard his tenants' right to quiet enjoyment of their respective rental units. If the noise of a bathroom fan at a volume that keeps the upstairs occupants from sleeping, the units may not be adequately soundproofed.

Although SM alleges that the tenant has been running the fan "constantly" for an unspecified period of time, CM states only that the tenant has been deliberately turning on the fan since she received the 1 Month Notice. CM's evidence does not suggest the fan was an issue at all until after the 1 Month Notice. And I cannot accept that the tenant, even after receipt of the 1 Month Notice, has been staying up at night, or waking up every time the timer runs the fan out, to start the fan again out of spite.

Although the landlord alleges that the tenant has been "harassing" CM, the landlord has not submitted any documentary evidence this communication, which ought to have been relatively simple to acquire. The landlord has submitted a text from the tenant stating that she was contacted first by the upstairs tenant, which is consistent with the tenant's submission that the communication has not been one-sided.

The landlord has submitted letters recording the landlord's view of conversations in April of 2016 and May of 2017. A third letter dated June 12, 2017 was issued after service of the 1 Month Notice, and describes interactions after that. Although events occurring after service of the 1 Month Notice can be considered, the landlord is required to show that there was cause to end the tenancy before the 1 Month Notice was issued. Here,

the two interactions described or referenced in the landlord's two letters, and occurring approximately a year apart, are not sufficient to establish cause.

I do not accept that where BC's approach to the landlord has involved crying qualifies as unreasonable or significant disruption or interference.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice is cancelled. This tenancy will continue until it is ended in accordance with the Act.

Both parties are reminded that they can end this tenancy by mutual agreement.

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: August 11, 2017

Residential Tenancy Branch