



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 Tenants' Application for Dispute Resolution (the "Application") filed on June 19, 2017 to cancel a 1 Month 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") and to recover the filing fee from the Landlords.

Both parties appeared for the hearing. However, only the female Landlord and the Tenants provided affirmed testimony. 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 permitted evidence, make submissions to me, and to cross examine the other party on the evidence provided.

The Landlord confirmed receipt of the Tenants' Application and their documentary and digital evidence prior to the hearing. However, the Landlords had provided to the Residential Tenancy Branch six pages of evidence from the upstairs renters in support of the 1 Month Notice, but confirmed that this had not been served to the Tenants for concern of escalating the dispute.

The Residential Tenancy Branch Rules of Procedure establish that a party relying on evidence to support their case must serve a copy of that evidence to the other party so that the other party is aware of the claim and case being made against them and is able to respond accordingly. As the Landlords failed to serve their documentary evidence to the Tenants for this hearing, I find it would be prejudicial to the Tenants for me to have allowed and considered this into evidence. Therefore, I informed the Landlords that I would not consider this evidence in my findings. The Landlords confirmed their understanding of this and stated that they would continue with the hearing with their oral evidence which they were at liberty to provide in the hearing.

Issue(s) to be Decided

Have the Tenants established that the 1 Month Notice ought to be cancelled?

Background and Evidence

Both parties agreed that this tenancy for the downstairs rental unit of a duplex residential home started on November 2, 2017 for a fixed term tenancy of six months which expired on April 30, 2017. Since this time the tenancy has continued on a month to month basis thereafter. Rent in the amount of \$900.00 is payable by the Tenants on the first day of each month.

The parties confirmed that on June 11, 2017 the Tenants had been personally served with the 1 Month Notice. The vacancy date on the 1 Month Notice is July 31, 2017 and the reason for ending the tenancy is because the Tenants are alleged to have significantly interfered with or unreasonably disturbed another occupant or the Landlord. Under the details of cause section of the 1 Month Notice, the Landlords refer to and write about an incident that took place on June 10, 2017. The Landlords were informed that they bear the burden to prove the 1 Month Notice and were then asked to present the reason for ending the 1 Month Notice.

The Landlord testified that at about 5:00 a.m. on June 10, 2017 they received a call from the female Tenant who informed that they had gotten into a verbal altercation with the upstairs renters over a noise disturbance because the upstairs renters were being sick in the toilet. The Landlord testified that the female Tenant alleged that they were being threatened by the upstairs renters and asked whether the police should be called. The Landlord explained that because she could hear the altercation in the background she informed the female Tenant to call the police if she wanted to.

The Landlord testified that this is a series of complaints that she has received from the Tenants which is now causing her harassment and disturbance. The Landlord testified to previous incidents which were not detailed on the 1 Month Notice. The Landlord explained that the Tenants had made a number of complaints, as evidenced in the Tenants' email correspondence provided for this hearing, relating to a lack of heat in their rental unit and exaggerated claims of flooding in the rental unit coming from the upstairs unit. The Landlord explained that on investigation of the Tenant's complaints she found the furnace to be running properly and there was not a flooding in the rental unit as alleged by the Tenant. However, the Landlord acknowledged that there was a

small amount of leaking water coming into the rental unit as a result of the upstairs renters bathing their children.

The Landlord testified that the Tenants' main complaints are from noise coming from the rental unit of the upstairs renters which occurs outside of the permitted by-law hours. The Landlord explained that this issue has been going on since the tenancy started and that the Landlord attempted to get the parties together in November 2016 but the Tenants failed to appear.

The Landlord stated that she has spoken to the upstairs renters about the alleged noise complaints but they have made their own allegation that it is the Tenants that are causing noise by arguing between them. The Landlord confirmed that on the June 10, 2017 incident, the police attended the location but no further action was taken. The Landlord stated that she is frustrated because the Tenants are unable to get along with the upstairs renters.

The female Tenant explained that at 3:30 a.m. on June 10, 2017, they were woken up by the upstairs renters who were causing a disturbance by stomping around, partying, and being sick in the toilet. The female Tenant testified that at about 4:40 a.m., the female and the male Tenant went to their balcony where they were overheard by the upstairs renters venting about the noise disturbance the renters were creating. This then lead to a verbal altercation. The female Tenant explained that she did not know what to do so she phoned the Landlord to ask if she should call police.

The Tenants dispute the 1 Month Notice and state that while they can tolerate the noise disturbances coming from the upstairs rental unit during regular day time hours, they cannot put up with all the noise coming in the late hours of the night and early hours of the morning including disturbance from the renters' young children.

In response to the allegations made by the Landlord during the hearing about harassment from complaints, the Tenants disputed this. The male Tenant explained that their requests for the Landlord to deal with repair issues in this tenancy are genuine and legitimate. The male Tenant explained that they have a duty to alert the Landlord to any leaking issues to mitigate any loss to the Landlord.

The Tenants explained that they have attempted to the talk to the upstairs renters about the noise issues but this only lead to the Tenants being verbally abused. The Tenants submitted that the Landlords are taking the side of the upstairs renters and deny they have caused significant disturbance to the Landlord or the upstairs renters. The Tenants

acknowledged that they do have arguments between them that may lead to some disturbance but this is no more than the disturbance being caused to them by the upstairs renters.

Analysis

Section 47 (1) of the *Residential Tenancy Act* (the “Act”) allows a landlord to end a tenancy for cause with a 1 Month Notice. I find the Landlords served the Tenants with a 1 Month Notice that complied with Section 52 of the Act. I accept the undisputed evidence that the Tenants were personally served with the 1 Month Notice on June 11, 2017 pursuant to Section 88(a) of the Act. I find the Tenants made the Application to dispute the 1 Month Notice within the ten day time limit stipulated by Section 47(4) of the Act.

When a landlord issues a tenant with a 1 Month Notice, the landlord bears the burden to prove the reason on the 1 Month Notice disputed by the tenant. 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 Landlords have failed to provide sufficient evidence to prove the 1 Month Notice. The Landlords relied solely on oral testimony as evidence for the reason on the 1 Month Notice and such serious allegations would require the need for documentary or corroborating evidence to support the disputed testimony. There was no direct testimony from the upstairs tenants or any independent evidence that verified the evidence before me. I find that one unproven incident that took place on June 10, 2017 is not sufficient for me to find that it is significant in nature and warrants the ending of the tenancy. In this respect, I find the evidence resulted in one party’s word against the others and I find the Landlords’ evidence was no more compelling than the Tenants’ evidence.

Having examined the email evidence provided by the Tenants, I find there is insufficient evidence that the Tenants’ complaints during this tenancy would constitute harassment. Instead, I find on the balance of probabilities that the Tenants’ complaints are not being made out of ill intention or a means to cause harassment to the Landlords.

I accept that this is a difficult situation the Landlords find themselves in, having to deal with two disputing parties. However, this is not reason alone to end a tenancy. The Landlords have not met the burden of proof on this occasion but must take more reasonable steps to gather, request, and make available sufficient evidence to prove

any future 1 Month Notices issued to the Tenants. In the alternative, I encourage all parties to meet and to resolve this dispute between them before the parties turn to the remedies provided for by the Act.

Based on the foregoing evidence, I cancel the 1 Month Notice dated June 10, 2017. The tenancy will continue until it is ended in accordance with the Act. As the Tenants have been successful in cancelling the 1 Month Notice, pursuant to Section 72(2) (a) of the Act the Tenants may recover their \$100.00 filing fee by deducting it from a future installment of rent. The Tenants should attach a copy of this Decision when making the reduced rent payment.

Conclusion

The Tenants' Application to cancel the 1 Month Notice is granted. The tenancy will continue until it is ended in accordance with the Act. The Tenants may recover their filing fee through their next installment of rent. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 28, 2017

Residential Tenancy Branch