



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”).

I note that Section 55 of the *Act* requires that when a Tenant submits an Application seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant C.H. (the “Tenant”), the Tenant’s advocate (the “Advocate”) and the Landlord; all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of the documents as explained below.

The Tenant testified in the hearing that the Application and the Notice of Hearing were personally served on the Landlord on August 23, 2017, and the Landlord confirmed receipt of these documents on that date. As a result, I find that the Landlord was personally served on August 23, 2017.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

At the outset of the hearing I advised the parties that although the Application was received on August 17, 2017, it appears that the 1 Month Notice was dated August 23, 2017. I inquired with the Tenant as to why they applied to cancel a 1 Month Notice that had not yet been issued, and the Tenant advised me that they applied based on a previous 1 Month Notice dated July 30, 2017.

The Landlord testified that the previous 1 Month Notice, which had been completed and taped to the door of the rental unit by the caretaker on July 30, 2017, had not been completed properly, and was therefore of no force or effect. The Landlord testified that as a result, a second 1 Month Notice had been issued on August 23, 2017. The Tenant testified that they called the Branch regarding the situation and were advised to keep the original hearing date to dispute to second 1 Month Notice, dated August 23, 2017.

As all parties agreed that the 1 Month Notice dated August 23, 2017, is the subject of this dispute, and that the original 1 Month Notice is of no force or effect. As result, I proceeded with the hearing on that based on the 1 Month Notice dated August 23, 2017.

At approximately 9:45 am, the Landlord disconnected from the conference call without notice. At the time of the Landlord's disconnection, the Tenant was nearing the end of their testimony. As this hearing dealt with a Tenant's Application to cancel a 1 Month Notice, the Landlord provided their evidence and testimony first, and at the time of the disconnection, the Landlord had already finished providing their testimony. The hearing continued for 5 more minutes, during which time the Tenant finished their remaining testimony, and provided their preferred contact method for the receipt of the decision. The line remained open for the Landlord to reconnect to the hearing during that time, however, the Landlord did not call back and the hearing was concluded at 9:50 am.

Issue(s) to be Decided

Is there a valid reason to cancel the 1 Month Notice under the Act?

If the Tenant is unsuccessful in seeking to cancel the 1 Month Notice, is the landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

The Landlord testified that the above named Tenants moved into the rental unit on June 30, 2017. The Landlord testified that there is a verbal tenancy agreement in place for the Tenants to pay rent in the amount of \$500.00 on the first day of each month, beginning July 1, 2017. The Landlord testified that the tenancy is a month to month tenancy and that the Tenants paid a security deposit in the amount of \$250.00, which the Landlord still holds. The Tenant confirmed that these are the correct terms of the tenancy agreement.

The Landlord testified that approximately one week after the Tenants moved in, the caretaker received complaints that the Tenants were arguing loudly. The Landlord testified that a few days later the disturbances between the Tenants escalated to the point where items were being thrown in the unit and the RCMP were called. As a result, the Landlord testified that they requested that the caretaker speak to the Tenants about the disturbances. The Landlord stated that despite the conversation between the caretaker and the Tenants, the disturbances continued, and several days later the RCMP were called again. The Landlord testified that when the caretaker attempted to deescalate the situation, the above named Tenant uttered threats to the caretaker, whom they believe filed a police report. Further to this, the Landlord testified that on July 28th and 29th, the caretaker advised them that other Tenants in the building also received threats from the above named Tenant.

The Landlord provided me with two police report numbers in the hearing; however, they stated that the police would not release information to them regarding the reports, as they were not involved in the disputes. The Landlord testified that as a result of the above issues, a 1 Month Notice was served on the Tenants on August 23, 2017. The Landlord also testified that since the issuance of the Notice, the Tenant D.M. has returned from residential treatment and the disturbances have continued.

The 1 Month Notice in the evidence before me, dated August 23, 2017, has an effective vacancy date of September 30, 2017, and indicates that it was posted to the door of the rental unit on August 23, 2017. In the hearing the Tenant acknowledged receiving the 1 Month Notice in the manner noted above.

The 1 Month Notice provides the following reasons for ending the tenancy:

- Tenant or person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
 - Put the landlord's property at significant risk.

In the hearing the Tenant refuted the Landlords testimony that they were the cause of the disturbances noted by the Landlord. The Tenant testified that the walls in the building are very thin and that a number of the other Tenants in the building are often very loud. The Tenant testified that on both of the occasions noted by the Landlord, the RCMP actually attended the building to deal with a party or disturbance in another unit and that two individuals from another unit were arrested on one of those occasions. The Tenant testified that on several of the occasions noted by the Landlord, the other Tenant D.M., had been away in residential treatment and therefore it would have been impossible for them to have been engaged in a dispute in the rental unit. Further to this, the Tenant testified that the caretaker apologised to them on a number of occasions for mistakenly attributing disturbances to their unit.

In the hearing, the Advocate testified that they had contacted the police regarding the police file numbers provided by the Landlord, and that although the police would not release the details of the reports to them, they confirmed that neither of the Tenants had been arrested or charged in relation to these police file numbers.

Analysis

Section 47 of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy 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,
- (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) Put the landlord's property at significant risk;

In the hearing, the Landlord and Tenant provided conflicting testimony. Although the Landlord testified that many disturbances were caused by the Tenants, the Landlord did not submit any corroborating evidence regarding these disturbances from the RCMP, the caretaker, or the other residents of the building. Further to this, I find that it was the

caretaker, and not the Landlord, who was present for the disturbances at the property and I find it significant that they did not appear at the hearing to provide testimony or evidence in support of the 1 Month Notice issued by the Landlord.

As a result, I find the Landlord has failed to provide sufficient evidence to establish that the Tenants or a person permitted on the property by the Tenants, significantly interfered with or unreasonably disturbed another occupant or the Landlord; seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; or put the Landlord's property at significant risk.

Based on the above, I find the Landlord has failed to establish a cause under Section 47 of the Act to end the tenancy and I order that the 1 Month Notice dated August 23, 2017, be cancelled.

Conclusion

I order that the 1 Month Notice dated August 23, 2017, be cancelled and that tenancy continue in full force and effect until it is cancelled in accordance with the *Act*.

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: September 28, 2017

Residential Tenancy Branch