



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the Tenants' Application for Dispute Resolution (the "Application") to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated July 12, 2017.

The Landlord, the Tenants, and an advocate for the Tenants appeared for the hearing. The Landlord also called three witnesses during the hearing. All testimony was taken under affirmation. The Landlord confirmed receipt of the Tenants' Application and their three pages of documentary evidence and written submissions which served prior to the hearing. The Landlord also confirmed that he had not provided any documentary evidence for this hearing.

The hearing process was explained to the parties and they had no questions as to how the proceedings would be conducted. Both parties were given a full opportunity to present evidence, make submissions to me, and to cross examine the other party and witnesses on the evidence given.

Issue(s) to be Decided

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

Background and Evidence

Both parties confirmed that this tenancy for the upper portion of a rental home started on November 1, 2013 on a month to month basis. Rent for the tenancy is \$575.00 payable by the Tenants on the first day each month. The Tenants paid a \$225.00 security deposit which the Landlord holds in trust. The parties confirmed that there are no rental arrears in this tenancy.

The Landlord confirmed that he had served the Tenants the 1 Month Notice on July 12, 2017 by posting it to the Tenant's door. The Notice was provided into evidence and states a vacancy date of August 15, 2017.

The 1 Month Notice shows the reasons for ending the tenancy are because the Tenants have engaged in an illegal activity that has or is likely to: adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the Landlord; and jeopardise a lawful right or interest of the Landlord.

The Tenants confirmed receipt of the 1 Month Notice on the same day and disputed it by making an Application on July 13, 2017. The Landlord was invited to present evidence around the reasons provided on the 1 Month Notice.

The Landlord testified that the Tenants have in their rental unit a fire exit door opening to the roof of the home. The Landlord testified that the Tenants having been accessing the roof in order to smoke cigarettes and to congregate on. The Landlord explained that the Tenants are using the roof as a balcony and when they are on it, they are often yelling and screaming.

The Landlord explained that the roof of the building has no railing and the Landlord risks liability as a result of the Tenants' illegal use of it. The Landlord stated that he had served a breach letter to the Tenants regarding their use of the roof but he has since observed the Tenants again using the roof to smoke on.

The Landlord testified that the Tenants' yelling and screaming is causing stress and anxiety to other residents residing in the rental home and exacerbating their health conditions.

The Landlord testified that on one occasion the Tenants were arguing amongst them in the common area of the rental home during which the Tenant threatened one of the other residents of the home and threatened to burn the rental home down. The Landlord stated that he did not call police but he should have done at the time.

The Landlord stated that he has a number of complaint letters, which he also mentioned on the details section of the 1 Month Notice, but he had not provided them into evidence for this hearing out of fear for revealing the complainants' identities.

The female Tenant acknowledged they had been served with a letter prohibiting the use of the roof. The letter was provided into evidence by the Tenants and was dated July 10, 2017.

The female Tenant testified that they had previously used the roof to smoke on, but did not realise the liability that the Landlord may have if something were to happen to them until they got the July 10, 2017 letter. The Tenants both testified that since being served with that letter, they have not been on the roof again.

The female Tenant denied the Landlord's testimony about making threats to other residents and to burning the rental home.

The Landlord then called three witnesses to provide evidence, whose names appear on the front page of this Decision. The Tenants were allowed to cross examine the witness evidence provided.

The first witness, BB testified that he observed the Tenants in June 2017 having an argument in which the female Tenant threatened to slit the throat of the male Tenant and then threatened to burn the house down.

The male Tenant cross examined BB and submitted that the argument was about the Tenants having guests in the rental unit which the Landlord had authorised. The Tenants denied making any such threats.

The second witness, LB, testified that he witnessed the Tenants regularly frequenting the roof during which they would spit and throw cigarette butts off the roof. LB testified that the Tenants were so loud that it started to exacerbate his heart condition. LB explained that the Landlord was allowing renters to rent for a small amount of rent which should be appreciated.

The Tenants questioned LB and asked how he could prove that the disturbance he testified to was directly causing his heart condition.

The third witness, KO, testified that last year, the male Tenant assaulted him over his relationship with the female Tenant and since then he has continued to be a trouble maker. The witness confirmed that he had not called police for this incident.

The female Tenant responded stating that the male Tenant was her spouse of nine years and that KO was not assaulted as he claimed.

The Tenants stated that they have “drama” with the three witnesses used by the Landlord and that the witnesses are giving evidence out of a vendetta against them.

The Tenants referred to a hand written statement they had obtained from another resident in the rental home. That resident writes that he has lived in the house for one year and the Tenants are quiet, don’t cause any trouble, and mind their own business.

The Landlord responded testifying that he had a statement from the same resident who allegedly wrote the letter for the Tenants, in which that resident writes the Tenants are causing a disturbance. The Landlord submitted that the hand written letter was a forgery as the signatures appear to be different. The Landlord confirmed that he had not provided any of the evidence he was referencing for this hearing and had not given the Tenants any copies of the materials he was referring to.

The Tenants rebutted stating that they saw the resident write and sign the letter and therefore reject the idea that the handwritten letter had been forged by them.

Analysis

Section 47(1) (e) of *the Residential Tenancy Act* (the “Act”) allows a landlord to give a notice to end tenancy for the reasons indicated by the Landlord in this case.

I have examined the 1 Month Notice and I find that it complies Section 52 of the Act and I accept the undisputed evidence that it was received by the Tenants on July 12, 2017. Accordingly, 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.

An ending of a tenancy is a serious matter. When a landlord issues a tenant with a notice to end tenancy for the reasons in this case, the landlord bears the burden of proving the reasons disputed by the tenant. I have carefully examined the evidence of both parties and I make the following findings.

I accept the Tenants were using the balcony to smoke cigarettes on prior to the issuing of the July 10, 2017 breach letter. In such a case, it would have been appropriate and prudent for the Landlord to have given such a breach letter before seeking to end the tenancy, which he did. However, the Landlord has provided me with insufficient evidence that the Tenants have continued to use the roof after the breach letter was served. I find the Landlord’s disputed oral testimony alone is not sufficient for me to

conclude that between July 10, 2017 and July 12, 2017, the Tenants have violated the breach letter detailing the prohibition of the roof.

In such a case, it would be reasonable to expect that the Landlord would have been in possession of more conclusive evidence, such as a photograph, to prove this claim.

In addition, I also find the Landlord's disputed oral testimony is also not sufficient to prove the Tenants have caused disturbance or made threats that warrant the ending of tenancy. I note that when these alleged disturbances occurred, the police were not called. The attendance of the police would not have been conclusive enough to prove the threat, but certainly this would have gone some way to give validity to the allegation and reflect the serious nature of the alleged threats.

I noted the Landlord provided no documentary evidence prior to this hearing to support the 1 Month Notice. Instead, the Landlord referenced detailed complaint letters which he had not provided into evidence. Again, I find it would have been prudent for the Landlord to have served and submitted such vital evidence if he wanted to rely on it during the hearing.

The Landlord did however provide three witnesses who gave direct testimony during the hearing and were subject to cross examination by the Tenants. This type of evidence can be important in such cases. However, I have placed little evidentiary value on the witness evidence. This is because the three witnesses reside in neighbouring rooms to the Tenants where they share common area facilities. I accept that the parties all have a tumultuous relationship, that was certainly the impression I got when I heard the cross examination of the witnesses. Therefore, I find the witness evidence is weak and is not sufficiently independent for me to rely on.

In addition, I also find the Tenants' witness evidence from another resident of the rental home to show that the Tenants do not cause noise, is sufficient rebuttal to the Landlord's witness evidence. The Landlord alleged that the Tenants' witness statement was fraudulent but provided no corroboration to show this was the case. Again, I find that such evidence would have been essential to furnish for this hearing, which was not made available before me.

After taking into consideration the totality of the evidence before me, I find the Landlord's evidence is no more compelling than the Tenants' evidence. Therefore, I must find the Landlord has failed to provide sufficient evidence to prove the reasons on the 1 Month Notice.

As a result, I cancel the 1 Month Notice dated July 12, 2017. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The Landlord has failed to provide sufficient evidence to prove the 1 Month Notice. 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 parties are cautioned to conduct themselves 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 Act.

Dated: September 28, 2017

Residential Tenancy Branch