



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenant filed under the Residential Tenancy Act (the “Act”).

The landlords’ application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant’s application is seeking orders as follows:

1. To cancel an a 1 Month Notice to End Tenancy for Cause, issued on July 13, 2017; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Are the landlords entitled to an order of possession?

Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 31, 2017.

The reason stated in the Notice was that the tenant has:

- 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;
- put the landlord's property at significant risk; and
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlords testified that the tenant has unreasonably disturbed another occupant by continuing to play their television at an unreasonable level. The landlord stated that the tenant has received several warning letters before the Notice was issued.

The landlords testified that on May 3, 2017, they attended the occupant's rental unit and witness a loud base type sound that physically vibration could be heard and was quite disturbing. The landlord stated that those noises were heard again on May 4, 2017 and May 9, 2017.

The landlords stated that on May 9, 2017, they sent a text message to the tenant regarding the noise complaint and the tenant responded,

“... also let him know I will be turning it up now until 10:59pm...”

[Reproduced as written]

File in evidence are written complaints, warning letters and text messages in support of the landlords reasons.

The landlords testified that the tenant was also served with a warning letter regarding parking in an unauthorized parking spot. The landlords stated that the unauthorized parking spot is used by many other occupants in the building to access their own parking spot, as this spot is used for vehicle to turn around, including the tenant. The landlords stated that this has been an ongoing issue with the tenant. Filed in evidence are photographs of the tenants' vehicle and written warning.

The landlords testified that as a result of the tenant receiving the warning letter, the tenant went to the building managers door and was either kicking or pounding on the door, and was aggressively swearing about receiving the warning letter.

The landlords testified that the tenant threatened the building managers that they will be leaving before he would be. The landlords stated the tenant is aggressive and disrespect to the building managers, as an example, a text message sent on 07-06-2017 reads,

“hey dumb and dumber it only took you a year and a half to figure out how to turn the hall ventilation back on ...”

[Reproduced as written]

The landlords testified that the building managers quit after continuing to feel threatened and harassed by the tenant. The landlords stated that they cannot continue the tenancy as the tenant does not take any their warning letters seriously.

MH testified that they were the previous building managers and that they are in their sixties. MH stated that when the tenant attended their rental unit pounding or kicking on their door they felt threatened. MH stated that the police were contacted and spoke to tenant; however, they did not charge the tenant as they did not believe that the tenant was in violation of the criminal code. MH stated that it was that day they decided to quit as they could no longer deal with the tenant's aggressive behaviour towards them.

The tenant testified that the landlords have been harassing them and trying to evict them because they called the fire department and the fire department came to the property and issued fines to the landlord.

The tenant testified that when they received the text complaint of noise, it was only about 8:30 pm, and their television was at a reasonable level. The tenant stated that they only responded to the text message indicating that they were turning it up because they were mad.

The tenant testified that they did go to the building managers' door and pounded on the door. The tenant stated that they were only in the unauthorized parking spot for five minutes and within that time the landlord issued them a warning letter.

The tenant testified that they building managers' have no authority to issue warning letters, as they were told by another landlord that they did not have to listen to the managers.

The landlords responded that they never had any calls or fines from the fire department. The landlords stated that it does not make any sense that another landlord would give the tenant permission to ignore the building managers. The landlords stated that they have asked the tenant several times to produce the letter that they stated to the police that they have.

The tenant responded it was not a letter; it is a 48 minute video recording they made of a meeting they had.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have provided sufficient evidence to show that the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord.

I have read the written complaints of the occupant, warning letters and text messages submitted as evidence by the landlords. In this case the tenant had been warned by the landlords about the ongoing noise from their television. The noise was witnessed by the building manager. The tenant has ignored those warning and has responded to those complaints by indicating they will be turning it up. I find the action of the tenant unreasonable. I find the tenant has unreasonable disturbed another occupant by failing to have their television at a reasonable level.

Further, I find the tenant's action of pounding on the building manager's residence door causing an unreasonable disturbance regarding the parking warning letter was unreasonable. The tenant admitted that they were parked in the unauthorized spot, whether it was for 5 minutes or 5 hours that is not relevant. What is relevant was the tenant knew they were not entitled to parking in that spot and a warning letter was reasonable in the circumstances. I find the tenant's action was an unreasonable disturbance on the landlord.

Furthermore, I find the tenant's action of referring to the building managers as "dumb and dumber" was unnecessary and shows the lack of respect or consideration the tenant has for others.

I also do not accept the tenant's evidence that they were given permission by the landlord to ignore the building managers as that does not make sense, when the role of building manager is to oversee the building and deal with the day to day issues.

Further, I find the tenant's action of video recording a person without their consent or knowledge is unreasonable and they failed to present such evidence at the hearing.

I also do not accept the tenant's evidence that they are being harassed by the landlords simply for a call that they made to the fire department. The tenant provided no documentary evidence to support that the fire department responded to the tenant's complaint or that any fines or any other penalties were issued to the landlords.

I find the landlords were acting within their legal rights to deal with noise complaints and parking issues, this does not constitute harassment.

I find the Notice issued on July 13, 2017, has been proven by the landlords and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

As I have ended the tenancy based on unreasonably disturbances, I find it not necessary to consider the merits of the other remaining reasons stated in the Notice.

As the tenancy legally ended on August 31, 2017, the effective date of the Notice, I find the tenant is now overholding the rental unit. I find the landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court.

The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Since the landlords have been successful with their application, I find the landlords are entitled to recover the cost of filing their application from the tenant. Therefore, the landlords are authorized to deduct that amount from the tenant's security deposit in full satisfaction of this award.

Conclusion

The tenant's application to cancel the Notice, issued on July 13, 2017 is dismissed.

The landlords are granted an order of possession. I grant the landlords a monetary order for the cost of filing their application and the landlords are authorized to deduct that amount from the tenant's security deposit in full satisfaction of this award.

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: October 16, 2017

Residential Tenancy Branch