



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF, CNC, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that they served the other party with the notice of hearing package(s) and the submitted documentary evidence via Canada Post Registered Mail. Both parties confirmed receipt of these packages as claimed. Neither party raised any issues with service. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the *Act*.

AT the outset, both parties confirmed that the landlord cancelled the 10 Day Notice issued for unpaid rent and as a result the landlord's application for a monetary claim

and the tenants' application to cancel the 10 Day Notice are withdrawn and no further action is required for these portions of the applications.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recovery of the filing fee?

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on January 1, 2017 on a fixed term tenancy ending on December 31, 2017 as shown by the submitted copy of the signed tenancy agreement dated December 29, 2016. The monthly rent is \$900.00 payable on the 1st day of each month. A security deposit of \$399.00 was paid on December 20, 2016.

The landlord's agent (the landlord) seeks an order of possession as a result of a 1 Month Notice to End Tenancy issued for Cause dated July 18, 2017 and recovery of the filing fee. The tenants seek an order cancelling the 1 Month Notice and recovery of the filing fee.

Both parties agreed that on July 18, 2017, the landlord served the tenants with the 1 Month Notice dated July 18, 2017. The 1 Month Notice sets out an effective end of tenancy date of August 31, 2017 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

Details of the notice state:

Due to multiple noise complaints from tenants, issuing eviction notice.

The landlord claims that multiple noise complaints have been received from other occupants of the rental building. The landlord provided affirmed testimony that the tenant has been issued at least 2 caution notice(s) regarding noise and excessive amounts of people in the rental unit. The landlord has provided copies of two such notice(s) dated April 7, 2017 and May 30, 2017. The landlord stated that these notice(s) were posted to the rental unit door and as a result the 1 Month Notice dated July 18, 2017 was issued. The landlord also claims that subsequent to the 1 Month Notice being issued additional noise complaints have been received by other occupants for this tenant for whom a caution notice was issued on October 6, 2017.

The tenants provided affirmed testimony that he disputes that the noise he makes is not excessive and that he has never hosted a party. The tenant states that he has never received a caution letter from the landlord regarding noise complaints.

The landlord stated that she does not have any proof of service of any of the caution notice(s) or anything in writing from the complainants for excessive noise. The landlord claims that the notice(s) were served by two employees and that the complaints received by the other occupants were never made in writing. The landlord was informed that the other occupants and employees fear for their safety, but was unable to provide any evidence of threats by the tenant.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties confirmed that the landlord served the tenant with the 1 month notice dated July 18, 2017 by posting it to the rental unit door. As such, I am satisfied that the tenant has been properly served with the 1 Month Notice dated July 18, 2017. Both parties confirmed the details of the 1 Month Notice as being accurate.

On the issue of multiple noise complaints made by other occupants, I find that as the tenants have disputed that no noise produced was excessive and that the landlord was unable to provide any supporting evidence of noise complaints or details of the noise, I am unable to find on a balance of probabilities that the tenant caused excessive noise. I also find based upon the conflicting evidence of both parties regarding the service of caution notice(s) that the tenants have not been properly served with such a notice. The tenants disputed that no such caution notice(s) were received and the landlord's

agent was unable to provide any details of the service of these notice(s) other than to state that generally such notice(s) are served with two employees.

On this basis, the tenants' application to cancel the 1 Month Notice is granted. The 1 Month Notice dated July 18, 2017 is set aside and the tenancy shall continue. As such, the landlord's application is dismissed.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. The landlord's application is dismissed. The 1 Month Notice dated July 17, 2017 is set aside and the tenancy shall continue.

As such, I authorize the tenants to withhold one-time \$100.00 from the monthly rent upon receipt of this decision in satisfaction of the filing fee.

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 24, 2017

Residential Tenancy Branch