



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MT CNL LAT FF
Landlord: OPC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants applied for an order to:

- Allow more time to make an application to cancel the Landlord’s Notice to End Tenancy;
- Cancel of the Landlord’s Notice to End Tenancy for Landlord’s Use of Property;
- authorization to change the locks to the rental unit pursuant to section 70; and,
- authorization to recover his filing fee for this application from the landlord, pursuant to section 72.

The Landlord cross applied for:

- an order of possession based on a One Month Notice to End Tenancy for Cause

The Landlord attended the hearing on his own. Both Tenants attended the hearing, and brought another individual, R.P., as a witness. All parties provided affirmed testimony. Neither party raised any issues with respect to service of either of the Application Packages. Both parties confirmed receipt of each other’s documentary evidence.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenants stated that they were seeking to cancel the Landlord's 1 Month Notice to End Tenancy for Cause, rather than what they actually applied for on the application form (to Cancel of the Landlord's Notice to End Tenancy for Landlord's Use of Property). Pursuant to section 64 of the *Act*, I amend the Tenant's application and allow them to apply to have the 1 Month Notice cancelled, rather than their initial selection. Further, the Tenants applied for more time to make an application. However, more time was not required. As such, I dismiss this ground.

Next, I turn to the Residential Tenancy Branch Rule of Procedure 2.3. It states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The parties were given a priority hearing date in order to address the notice to end tenancy. The Tenants' request to allow them to change the locks is unrelated in that the basis for it rests largely on facts not relevant to the question of whether there are facts which establish the grounds for ending this tenancy. Furthermore, the full hearing time was used to cover issues relating to the 1 Month Notice for Cause. I exercise my discretion to dismiss the Tenants' request for an order to change the locks, with leave to re-apply.

Issue(s) to be Decided

- Are the tenants entitled to have the landlord's 1-Month Notice to End Tenancy for Cause (the Notice) cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord issued the 1-month Notice to End Tenancy for Cause (the 1-month Notice) for the following reasons:

Tenant or a person permitted on the property by 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, that the Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property.
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- jeopardize a lawful right or interest of another occupant or the landlord.

Under the "Details of Cause" section, the landlord specified the following: "Ongoing disturbance of the neighbours and landlord causing other tenants to move out. Due to her behaviour, the landlord is unable to rent the adjoining suite, thereby losing business. Told repeatedly, but will not stop her obnoxious behaviour."

In the hearing, the Landlord testified that the Tenants are noisy and have caused another occupant in the building to leave, costing him money. The Landlord further stated that he is having a tough time re-renting the neighbouring suite because nobody wants to live next to the Tenants.

The Landlord also pointed to his letter which he provided as evidence. In the letter he stated: that he was unable to get information from the police regarding how many times they were called due to the behaviour of the Tenants. He further stated that I could contact the RCMP to try and get this information. The Landlord also provided the contact information for the tenant who previously left. The Landlord also stated that the damage done to the rental unit by the grow-op and their dogs will likely cause major renovations that need to be done before their unit can be re-rented. The landlord further wrote that the lady, J.T., whom the Tenants blame for all the noise his ex-wife and has nothing to do with the property. The Landlord further indicated that there is another occupant in the building who is being evicted due to partying and noise, as well. The Landlord wrote that one of the Tenants, R.H., has allowed his co-renter, B.A., to continue to be a disturbance.

In the hearing, the Tenants testified that the occupant next door, that left, was equally noisy, and would have yelling matches through the adjoining walls before he moved out. The Tenants both refute that they were partying or being loud, as the Landlord has submitted. Both Tenants stated that the problematic person in this scenario is the ex-wife of the Landlord, J.T. The Tenants stated that J.T. lives across the street, and is an

alcoholic, who knows lots of people in the building. They stated that J.T. often comes over to the building with her son looking for people to party with. The Tenants stated that J.T. is aggressive, and does not take no for an answer.

The Tenants testified that they have repeatedly told J.T. that she is not welcome in their unit, although they admitted she has been over in the past (many months ago). They testified that J.T. can be heard being noisy in and around the building, and she comes over, often uninvited, to look for a place to party. The Tenants stated that J.T. abuses the fact that she knows the Landlord and threatens people that she will get them evicted if they don't let her come around to "party". The Tenants both testified that J.T. turned on them once she realized they wouldn't let her in anymore, and since that time, the Landlord has been seeking to evict them.

The Tenants provided several letters from other tenants supporting their claims on this matter, including evidence to support that J.T. and her son from across the street were also attending other units in the building to party, and in doing so would create disturbances (fights and yelling). The Tenants also provided letters from other tenants in the building to support that they are quiet and never create disturbances.

Analysis

First, I turn to the Landlord's letter and his statements that I could contact the police for more information on the Tenants (or to contact the previous tenant who left). I explained in the hearing that evidence of this nature should have been provided by the time of the hearing, in accordance with the Rules of Procedure. The onus is on each party to provide evidence in support of their position.

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

After reviewing the evidence before me, I first turn to the Landlord's claim that the Tenants have engaged in an illegal activity that has, or is likely to:

- Damage the landlord's property.
- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- Jeopardize a lawful right or interest of another occupant or the landlord.

In the hearing, the Landlord was offered the chance to elaborate on these grounds. However, he did not do so. I am only in receipt of one letter from the Landlord, which briefly mentions damage caused by a grow-op. There is no further evidence to support this claim. I find there is insufficient evidence to substantiate the Landlord's claims pertaining to this part of the Notice.

Next, I turn to the other portion of the Notice, in which the Landlord claims that the Tenants or a person permitted on the property by the tenants have:

- 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.

In support of these grounds, the Landlord testified that one of the Tenants, B.A., is largely responsible for the disruptions. The Landlord stated that his ex-wife, J.T., has nothing to do with this, and he claims that the Tenant, B.A., is the problem.

In consideration of this issue, I turn to the evidence before me. I note that the Landlord has not provided any further evidence (letters, or witness statements etc.) to substantiate his allegations on this point. In contrast to this, the Tenants have provided multiple letters indicating that they are not the source of the disturbances, but that a woman named J.T. is. The Tenants also provided letters from other occupants in the building supporting that they are quiet.

After reviewing the evidence on this matter, I find the Tenants have provided a more detailed and compelling account regarding the source of the disturbances in the building. Given this, I find it more likely than not that a portion of the unrest, and disturbance, and the basis for the Notice is related to an individual named J.T. who appears to come into the building to visit other units. I note that there is evidence to show that J.T. is affiliated with several different units (and occupants) in the building. As such, it is difficult to ascertain whose guest she is, and if she has been invited by someone who also lives in the building, or if she appears on her own accord. Ultimately, I find there is insufficient evidence that the disturbances described by the Landlord are a result of the Tenants involved in this dispute.

Furthermore, I find there is insufficient evidence to show that any loss in rental revenue of suites in the building is due to the Tenants' (or their guests) actions.

I find that the landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, the tenant's application is successful and the Notice issued August 29, 2017, is cancelled. Consequently, the Landlord's cross application for an Order of Possession based on the 1 Month Notice is dismissed. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenants were successful with their application, I grant them the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled. A portion of the Tenants' application was dismissed with leave to reapply.

The Landlord's application is unsuccessful and dismissed without leave to re-apply.

The tenancy will continue until ended 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: October 26, 2017

Residential Tenancy Branch