



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, MNDC

Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* ("Act").

The Tenant's Application for Dispute Resolution (the Tenant's Application) was convened to be heard with the Landlord's Application for Dispute Resolution (the Landlord's Application) after the issuance of a September 28, 2017, interim decision by a different Arbitrator.

The landlord sought:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant sought:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord called witness W.C. (LL Witness) to testify in support of the landlord's testimony and the tenant called witness J.M. (TT Witness) in support of the tenant's testimony.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord testified that they personally served the tenant with the Landlord's Application, along with all supporting evidence, on September 11, 2017. The tenant confirmed that they received the Landlord's Application and supporting evidence on this date. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with the Landlord's Application and supporting evidence on September 11, 2017.

On September 16, 2017, the tenant submitted an Amendment to an Application for Dispute Resolution (Amendment) to the Residential Tenancy Branch (RTB) to amend the monetary amount being requested by the tenant.

The Tenant testified that they posted the Tenant's Application and Amendment to the door of the on-site management office on September 16, 2017. The landlord confirmed that they received the Tenant's Application and Amendment. In accordance with section 71 of the Act, I find the landlord was duly served with the Tenant's Application and Amendment.

The tenant testified that they served their evidence to the landlord by posting it to the door of the on-site management office on October 15, 2017. The landlord confirmed that they received this evidence. In accordance with section 88 of the Act, I find the landlord was duly served with the tenant's evidence.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a One Month Notice was personally handed to the tenant on July 07, 2017. The tenant confirmed that they received the One Month Notice. In accordance with section 88 of the Act, I find the tenant was duly served with the One Month Notice.

Preliminary Matters

The tenant testified that they initially intended on disputing the One Month Notice on their Tenant's Application but did not select the correct option. The tenant requested to amend their application to cancel the One Month Notice.

Residential Tenancy Rules of Procedure (the Rules) Rule 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I find that the tenant indicated that they wanted more time to cancel the One Month Notice on the Tenant's Application, which was filed with the RTB on July 17, 2017, the

tenth day after receiving the One Month Notice. I further find no additional time was needed to dispute the One Month Notice as the tenant had submitted the Tenant's Application within the time limit set out in section 47(4) of the Act. I accept the tenant's testimony that they intended on disputing the One Month Notice on July 17, 2017, for the One Month Notice that was issued on July 07, 2017. Therefore, I allow the tenant to amend the Tenant's Application to cancel the One Month Notice.

Rule 2.3 of the *Rules* states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I find that the monetary portion of the Tenant's Application is not related to the primary issue for this hearing concerning the One Month Notice. For this reason, the monetary portion of the Tenant's Application is dismissed, with leave to reapply.

The landlord submitted a 'Further particulars of Conduct of the Tenant' which describes the tenant's actions since the hearing that took place on September 28, 2017. I note that I am only able to consider events that took place prior to the One Month Notice being given to the tenant and cannot consider events that occurred after service of the One Month Notice.

Issue(s) to be Decided

Should the One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided written evidence that this tenancy commenced on December 01, 2016, with a monthly rent of \$800.00, due on the first day of each month. The landlord testified that they currently retain a security deposit in the amount of \$400.00.

A copy of the landlord's July 07, 2017, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by August 31, 2017, the landlord cited the following reasons for the issuance of the One Month Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site.

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

The landlord also submitted into written evidence:

- a copy of an addendum to the tenancy agreement indicating that guests are restricted to 15 days unless written consent obtained by the landlord;
- a copy of an e-mail dated June 28, 2017, from the tenant's brother to the landlord, requesting that the landlord accept him as a co-tenant in the rental unit;
- a copy of an e-mail dated July 09, 2017, from the tenant's brother to the landlord, apologizing for misconceptions regarding the perception that the tenant was trying to impose her brother as a co-tenant and again requesting consideration for the tenant's brother to remain as a co-tenant in the rental unit;
- a copy of the 'Details of Cause' for the issuance of the One Month Notice which lists the rental unit as a small two bedroom unit. The Details of Cause lists the landlord's reasons for issuing the One Month Notice, including the tenant's brother living in the rental unit, the tenants failure to clean up items, parking violations, using the common area for cutting hair and placing a mirror in common area which could cause harm to other tenants and children;
- a copy of an e-mail, dated July 19, 2017, from the tenant to the landlord addressing the reasons noted in the One Month Notice and the 'Details of Cause, requesting to remain in the rental unit and resolve the issues surrounding the One Month Notice;
- A copy of an e-mail dated July 26, 2017, from the landlord to the tenant advising the tenant that the landlord is not prepared to negotiate with the tenant; and
- A copy of a letter dated August 02, 2017, from the landlord to the tenant further describing the circumstances regarding the tenant's brother staying with the tenant.

The landlord testified that the One Month Notice issued to the tenant is not based on a single issue. The landlord testified that there was an effort by the tenant to bring her brother into the rental unit and that there are concerns about the tenant's brother's attitude and behaviour causing problems at the residential premises. The landlord testified that the tenant has aggressively confronted other tenants, the tenant has been bringing in scrap materials and has been hoarding on property which is causing loss of quiet enjoyment of other tenants. The landlord testified that the tenant attempted to pass a petition around to prove that the residential premises are not being taken care of. The landlord testified that the tenant is confrontational to the landlord and other tenants.

The tenant testified that they do not believe that they have affected more than one tenant and that there are no witness statements that the tenant's behaviour is affecting others. The tenant testified that her brother initially came to visit her, eventually decided to move to the tenant's town permanently and that the tenant is trying to help her brother. The tenant testified that her brother gets along with the neighbours. The tenant testified that there was no petition being passed around about the condition of the residential premises. The tenant testified that her brother moved out of the rental unit after the One Month Notice was issued and does not come around the rental unit anymore due to the situation surrounding her tenancy. The tenant testified that she and her brother are loud people.

The landlord called on their witness W. C., the on-site manager at the residential premises, to provide testimony. The LL Witness was affirmed into the hearing and testified that the tenant's brother stayed at the rental unit excessively, continuing to stay there after the tenant was given a warning. The LL Witness testified that the tenant parked their vehicle in the fire lane for three days and then did it again and again. The LL Witness testified that the tenant is having parties and that there are noise complaints every weekend. The LL Witness testified that the tenant left mirrors in front of the residential premises which is a danger to other tenants and moved rocks in gardening area, which the LL Witness asked the tenant to move back six times. The LL Witness testified that reject material from repair work being done was dumped on the lawn at the tenant's request. The LL witness testified that the tenant's child's toys are left in the yard for days. The LL witness testified that the tenant has hung clothes on the fence to dry after she was asked not to. The LL Witness testified that the tenant filled up a storage area with her items and another tenant had to clean it up.

The landlord asked the LL Witness what else they recollected about the tenancy. The LL Witness testified that the tenant does not cooperate with him, frustrates her neighbours, seems to be friendly but ignores other people and gets angry when confronted. The LL Witness testified that the tenant ignores water restrictions and that one neighbour of the tenant excessively complains about noise after midnight from the rental unit.

In response to LL Witness's testimony, the tenant testified that when she moved into the rental unit she had a large amount of items. The tenant testified that LL Witness advised the tenant that she could store things in the back shed and upstairs dry storage but that there was water leaking in the back shed so she tried to put as many items as possible into the dry storage. The tenant testified that it was not until months after she put things in storage that she was informed there was a problem.

The LL Witness testified that they did give permission to the tenant to use the storage areas but that it was piled up six feet high, was a fire hazard and that the LL Witness and other tenants need access to get things in and out of the storage areas.

The tenant testified that only one tenant is making noise complaints about her tenancy and that the tenant would like to see witness statements. The tenant testified that she has a little daughter which might contribute to the noise coming from the rental unit.

The tenant testified that she had submitted a list of witnesses in her evidence, including other tenants in the building. The tenant called on one her witnesses, J.M., who is a tenant at the residential premises. The TT Witness was brought into the hearing and affirmed. The TT Witness testified that the tenant spreads a lot of happiness around the premises and that the tenant and her daughter bring joy.

The landlord had no questions or comments regarding the TT Witness's testimony.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As I have found that the tenant disputed this notice on July 17, 2017, and since I have found that the One Month Notice was served to the tenant on July 07, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find the landlord bears the burden of demonstrating, on a balance of probabilities, that there are an unreasonable number of occupants in the unit and that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I have reviewed all documentary evidence and affirmed testimony and I find that the landlord has failed to provide sufficient evidence to prove that there are an unreasonable number of occupants in the unit. Rather, it appears to me that the landlord has attempted to demonstrate that the tenant has failed to comply with a

specific term of the tenancy agreement, that guests may only stay up to 15 days at the rental unit and that any additional occupants must be approved by the landlord. I find the landlord has failed to provide any evidence that it is unreasonable for two adults and one child to live in a two bedroom unit.

Section 47 of the *Act* allows a landlord to end a tenancy if the tenant or a person allowed on the property by the tenant significantly interferes or unreasonably disturbs another occupant or the landlord.

I find that, based on the documentary evidence, affirmed testimony and a balance of probabilities, the landlord has provided insufficient evidence to prove that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the landlord has failed to provide any evidence to corroborate their assertions against the tenant.

I find that the landlord has not provided any written witness statements from other tenants, pictures or other documentary evidence, such as written warning notices, regarding the activities of the tenant or her brother and their impact on other tenants or the landlord at the residential premises. I find the landlord's evidence consists mainly of descriptions of the tenant's or her brother's behaviour but no actual proof of that behaviour.

I find that the testimony of the LL Witness is primarily concerned about the tenant's failure to adhere to the rules or expectations of all tenants who reside at the property. I find that the LL Witness has stated that the tenant has been unreceptive to being advised of the rules of the property but there is no mention of the tenant significantly interfering or unreasonably disturbing the LL Witness. I find that the LL Witness's testimony about noise complaints from other tenants is not supported by any witness statements or other documentary evidence and that the LL Witness did not testify that he personally witnessed any parties or excessive noise.

The *Act* does not provide for the landlord to make "rules" for a tenancy other than the terms that are set forth in the tenancy agreement and addendum. As such, the tenant hanging clothes on the fence would not be a rule that could be enforced by the landlord

unless there is another governing body that has rules which serve to restrict that behaviour, such as the municipality. Water restrictions imposed by the municipality would be an example of a “rule” that the landlord could enforce as the tenant using water in excess of the restriction could result in consequences to the landlord, such as the landlord being warned or fined by the municipality.

I find that the testimony of the TT Witness demonstrates that not all of the other tenants at the property have been significantly interfered with or unreasonably disturbed by the tenant or her brother. As the landlord has testified, there appears to have been a number of minor incidents of the tenant not adhering to the rules of the residential premises and not being receptive to being notified of these discretions, which has affected the relationship between the tenant, the landlord and the on-site management.

Based on the evidence and affirmed testimony from all parties, I find the landlord has insufficient grounds to issue the One Month Notice and to end this tenancy for cause.

For this reason the One Month Notice is set aside and this tenancy continues until it is ended in accordance with the *Act*.

As the landlord has not been successful in their application, I dismiss the landlord's request for the filing fee, without leave to reapply.

Conclusion

The tenant is successful in their Application.

The One Month Notice is set aside and this tenancy will continue until it is 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: November 02, 2017

Residential Tenancy Branch