



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARHAR GROUP/PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, ERP

Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"). The Tenant also applied for the Landlord to make emergency repairs to the rental unit, and for the Landlord to comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

The Landlord, the Co-Landlord, and the Tenant appeared for the hearing. Only the Landlord and Tenant provided affirmed testimony during the hearing. The Landlord confirmed receipt of the Application and the Tenant's documentary and photographic evidence served prior to the hearing.

The Landlord confirmed that he had not provided any evidence prior to this hearing and was going to be relying on his testimony and the Tenant's evidence.

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 on the evidence given.

Issue(s) to be Decided

- Has the Tenant established that the 1 Month Notice ought to be cancelled?
- Has the Landlord undertaken emergency repairs to the rental unit?
- Has the Landlord complied with the Act, regulation and/or tenancy agreement?

Background and Evidence

The parties confirmed that this tenancy started in November 2012 and is currently operating on a month to month basis. Monthly rent of \$600.00 is payable by the Tenant on the first day of each month.

The Tenant confirmed personal receipt of the 1 Month Notice dated October 2, 2017 on the same day. The Tenant provided the 1 Month Notice into evidence which provides for a vacancy date of November 1, 2017. The reason elected to end the tenancy is because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed the Landlord or another occupant.

The Landlord testified that the Tenant is involved with an ongoing dispute with a neighbouring renter which is causing disturbance to the Landlord. The Landlord explained that the Tenant is constantly harassing him with text messages late into the night about issues she is having with the neighbouring renter, which the Landlord alleges the Tenant is part of that problem.

The Landlord testified that the Tenant has been warned to serve documents to the Landlord's business address, but she instead regularly appears at his place of work to serve him documents personally, which the Landlord asserts is harassment.

The Landlord testified that when the Tenant calls and texts him late at night, he informs her to call the police. The Landlord explained that he is in the process of getting police reports through privacy information legislation and therefore was unable to provide this evidence.

The Landlord referred to the Tenant's evidence regarding the police responding to an incident where the Tenant and her boyfriend were arguing and causing a disturbance at the rental property. The Landlord submitted that this was sufficient evidence of significant disturbance.

The Tenant denied the Landlord's testimony stating that she is having problems with the neighbouring renter, for which the Landlord is not taking any action to resolve. This is the reason why the Tenant filed for the Landlord to comply with the Act.

The Tenant acknowledged that she had texted the Landlord on the occasions when she was having problems with the neighbouring renter at which point she was advised by

the Landlord to call police, which she did. The Tenant disputed the fact that she called the Landlord late at night.

The Tenant disputes the 1 Month Notice, stating that it is the neighbouring renter that is the aggressor in this case. The Tenant explained that the incident the Landlord was referring to related to her call of the police when she was being attacked by her boyfriend in the parking lot of the rental property.

The Tenant testified that the police did not attend the rental property but spoke to her boyfriend at his house. The Tenant submitted that she was simply responding to an attack by calling the police and this should not be a reason for her tenancy to be ended.

The Landlord testified that he has served the neighbouring renter also with a 1 Month Notice for which a separate dispute resolution hearing has been scheduled to hear that matter in December 2017. The Tenant did not believe the Landlord's testimony that a hearing to evict the neighbouring renter had been scheduled.

After determining and confirming the file number for the December 2017 hearing, the Tenant was satisfied that the Landlord had taken the necessary action to deal with the neighbouring renter who she alleges is the cause of the issues in this tenancy.

In relation to the Tenant's Application for emergency repairs, the Tenant complains of inadequate lighting around the stairway which is her main source of access to the rental unit. The Landlord testified that he had only been recently informed of this issue by the Tenant in writing and that he has already scheduled a contractor to attend the rental unit to deal with the issue. The Landlord stated that all contractors are busy but confirmed that the issue will be fixed within two weeks of this hearing. The Tenant was satisfied with this course of action.

Analysis

Section 47(1) (d) (i) of the Act allows a landlord to give a notice to end tenancy for the reason 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 Tenant on October 2, 2017. Accordingly, I find the Tenant 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 reason in this case, the landlord bears the burden to prove the reason disputed by the tenant. I have carefully examined the evidence of both parties and I make the following findings.

I find the Landlord offered insufficient evidence to corroborate his testimony that the Tenant had been calling him late at night or did so in a manner that could be construed as harassment. If a tenant has an issue with their tenancy, they have an obligation to put the landlord on notice of it in writing.

In this case, while I agree that it is not appropriate for the Tenant to have text or called the Landlord late into the night, I do not find that this evidence alone is not sufficient to end this tenancy. This is because I find the Tenant was not attempting to inform the Landlord about random trivial matters that could have been left for another time and neither had the Landlord informed the Tenant in writing that she is to refrain from contacting him in this manner.

Section 88 of the Act provides for the service methods of documents in a tenancy. One of those methods is personal service. A party cannot be prevented from serving documents in person. While I recognise that personal service of documents by the Tenant on the Landlord while he was at his place of work would have caused distress to the Landlord, the service of documents in this manner is not grounds for me to end the tenancy as this is allowed for by the Act.

The Landlord relies on the Tenant's police evidence that the Tenant and her boyfriend caused a disturbance in this tenancy. However, I find the Landlord provided insufficient details of this incident and how it exactly caused disturbance to the Landlord or other occupants. Furthermore, I find that this one incident alone of an altercation between the Tenant and her boyfriend, does not convince me that it was significant in nature that would warrant the ending of the tenancy.

After taking into consideration the evidence before me, I find the Landlord's evidence is no more compelling than the Tenant's evidence. Therefore, I must find the Landlord has failed to provide sufficient evidence to prove the reason on the 1 Month Notice. As a result, I cancel the 1 Month Notice dated October 2, 2017. The tenancy will continue until it is ended in accordance with the Act.

However, the Tenant is cautioned that she is responsible for the conduct of her guests and occupants and is to refrain from calling or texting the Landlord. Any communication

between the parties should take place using the service methods prescribed by the Act. The Tenant is also encouraged to serve documents to the Landlord's place business rather than his place of work.

In relation to the Tenant's request for the Landlord to comply with the Act, I am satisfied the Landlord has pursued remedies under the Act to deal with the ongoing issues between the Tenant and the neighbouring renter by issuing the neighbouring renter with a 1 Month Notice. That matter will be determined separately through the upcoming dispute resolution hearing in December 2017. Therefore, I dismiss this portion of the Tenant's Application.

With respect to the Tenant's Application for emergency repairs, I am satisfied by the parties' evidence that the Landlord has taken appropriate steps in order to provide proper lighting in the stairway of the rental unit which will be completed in due course. If the Landlord fails to do this, the Tenant is at liberty to re-apply to have this repair done and seek monetary compensation. Therefore, this portion of the Application is dismissed with leave to re-apply.

Conclusion

The Landlord has failed to prove the 1 Month Notice. The Tenants' Application to cancel the 1 Month Notice is granted. The Tenant's request to for the Landlord to comply with the Act is dismissed. The Tenant's claim for emergency repairs is dismissed with leave to re-apply.

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: November 01, 2017

Residential Tenancy Branch