



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord, the landlord's witnesses, Witness A.K. and Witness M.M., 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 tenant had an advocate attend the hearing but the tenant stated that he would primarily speak for himself. The witnesses were advised to leave the hearing and wait until called upon to testify.

While I have turned my mind to all the documentary evidence, including the testimony of the parties and witness testimony, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) sent to the landlord by way of registered mail on September 21, 2017. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

Neither party submitted any evidence to each other.

The Tenant confirmed that they received the One Month Notice on September 12, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice.

Issue(s) to be Decided

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

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

Background and Evidence

The tenant testified that this tenancy began on October 01, 2006, with a current monthly rent of \$1,144.00, due on the first day of each month. The tenant testified that he paid a security deposit in the amount of \$500.00. The landlord confirmed this to be true.

A copy of the signed landlord's One Month Notice, dated September 12, 2017, was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by October 12, 2017, the landlord cited the following reasons for the issuance of the One Month Notice:

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.*

The landlord testified that Witness M.M., an occupant of the residential premises, told the landlord that someone had been leaving garbage bags just outside the door of their rental unit. The landlord stated that Witness M.M. requested the landlord to address the issue, find out who is leaving the garbage at their door and have them stop doing it. The landlord submitted that another occupant of the residential premises, Witness A.K., saw the tenant leaving a garbage bag at the door of Witness M.M.'s unit and the landlord gave the tenant the One Month Notice after being advised of the tenant's actions. The landlord stated other occupants were angry with the tenant for leaving garbage at the door of their rental units but the tenant was actually only seen doing it once.

The tenant testified that the trouble started in June when someone started leaving garbage in the landing of the residential premises entrance. The tenant recounted that one day when the tenant got to the landing they saw two grocery bags containing household garbage and the tenant assumed that it was from Witness M.M.'s rental unit.

The tenant further recounted that he picked up the two bags of garbage and took them up a flight of stairs and left them at the door of Witness M.M.'s rental unit. The tenant testified that they only did this once and when Witness M.M. opened the door at the time the tenant was leaving the garbage bags, the tenant had a headache and did not want to engage with Witness M.M. and explain his actions. The tenant submitted that he regrets his actions and would apologize to Witness M.M. if given a chance.

The landlord called on Witness A.K. to join the hearing and provide their testimony. Witness A.K. stated that a few months ago he saw the tenant outside of the residential premises and greeted him. Witness A.K. stated that he followed the tenant up the flight of stairs and saw him leaving the garbage bags at the door of Witness M.M.'s rental unit.

Neither the landlord nor the tenant had any questions or comments regarding Witness A.K.'s testimony and he left the hearing.

The landlord then called on Witness M.M. to join the hearing and provide their testimony. Witness M.M. testified that he has had garbage placed in front of his rental unit for four months in June 2017, July 2017, August 2017 and September 2017 and that it stopped in October of 2017. Witness M.M. stated that in early September 2017 he heard something outside his door, opened it and saw the tenant walking away with two bags of garbage left outside of his door. Witness M.M. testified that he then called the landlord and the police about the incident.

The tenant commented that he thought the incident of leaving garbage at Occupant M.M.'s door happened in July 2017; however, the tenant did not deny it happened and apologized to Witness M.M. about the incident. The tenant stated that he does not use the type of garbage bags that he left at Witness M.M.'s door and that he uses big green garbage bags for all of his household garbage. The tenant stated that the two grocery bags of garbage that he left at the door of Witness M.M. had children's garbage items in them and that the tenant does not have children. The tenant maintained that he has not left garbage outside of Tenant M.M.'s rental unit other than the one time and that he takes his garbage to the proper garbage receptacle outside.

The landlord testified that regardless of when the incident happened, the tenant left garbage at Witness M.M.'s door, inside the building, which put the residential premises at risk for health issues.

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 the tenant disputed this notice on September 20, 2017, and since I have found that the One Month Notice was served to the tenant on September 12, 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 that there is no dispute that the tenant left two bags of garbage outside Witness M.M.'s door. I find that the tenant leaving garbage outside of a rental unit was only witnessed happening once, as the landlord testified, and that the landlord has provided no evidence to support that the tenant did this on multiple occasions to multiple occupants as claimed by the landlord's testimony. I find that each witness only testified to witnessing one incident, which is the incident that the tenant admitted to, although the parties were not able to agree exactly when this incident happened.

I find the landlord bears the burden of proof to demonstrate that this one incident of leaving the garbage at the door of Witness M.M.'s rental unit significantly interfered with or unreasonably disturbed Witness M.M. or other occupants and the landlord.

I find that the landlord has not provided any evidence or testimony to demonstrate the impact of the tenant's actions and how it significantly interfered with or unreasonably disturbed the landlord, other occupants and Witness M.M. other than the inconvenience of Witness M.M. having to put garbage that was not his in its proper place one time and the landlord having to address the issue with the tenant. I find that the tenant did not negatively engage with Witness M.M. upon being discovered leaving the garbage at the door of the rental unit. I find that there is no evidence or testimony that the tenant left garbage at Witness M.M.s door on multiple occasions prior to the incident that the tenant admitted to.

I accept Witness A.K.'s testimony that he followed the tenant coming into the residential premises from outside and that the tenant was not coming out of their unit with their own garbage to leave at the door of Witness M.M.s rental unit. I find this is relevant as it

supports the tenant's testimony that he thought Tenant M.M. was leaving his family's garbage in the landing instead of taking it all the way to the main garbage receptacle. I accept the tenant's testimony that he left the garbage at Tenant M.M.'s door in a spontaneous manner based on the tenant's misguided perception of who he thought was leaving garbage in the landing. Although this reasoning does not justify the tenant's actions, I find that it supports the tenant's testimony that he was not regularly bringing his own garbage to the door of Tenant M.M.'s unit.

I find it reasonable that, upon discovering the tenant engaging in this action on one occasion, the landlord could have issued a caution to the tenant and, if the behaviour continued, the landlord could have taken further action in accordance with the *Act*.

I further find the landlord bears the burden of proof to demonstrate that this one incident of leaving the garbage at the door of Witness M.M.'s rental unit seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that it put the landlord's property at significant risk. I find there is no evidence or testimony that the garbage left at the unit was anything other than regular household garbage and that there were contents in the garbage bags which were a serious health risk to Witness M.M. or other occupants and caused a significant risk to the landlord's property.

I find it reasonable to conclude that all the occupants in the residential premises have household garbage in their units until they choose to bring it to a garbage receptacle outside. I do not find it reasonable to conclude that the regular household garbage in other occupant's units are a health risk and put the landlord's property at significant risk.

I have reviewed all documentary evidence and affirmed testimony and I find that, based on a balance of probabilities and the above, the landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the tenant.

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 tenant has been successful in this application, I allow them to recover their filing fee from the landlord.

Conclusion

The tenant is successful in their Application.

The One Month Notice dated September 12, 2017, is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$100.00, to recover the filing fee for this application.

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: December 06, 2017

Residential Tenancy Branch