



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC OPC ERP LRE OLC PSF RP RR FF

Introduction

This hearing dealt with cross applications of the parties for multiple orders. The tenant applied September 29, 2017 and shortly after amended to cancel the landlord's 1 Month Notice to End tenancy for Cause (Notice to End) with a stated effective date of November 30, 2017. The landlord applied November 27, 2017 seeking an Order of Possession pursuant to the Notice to End.

Both parties attended the hearing. The landlord was represented by their legal counsel as they are out of country. The parties respectively acknowledged exchange of all document evidence further submitted to me and that they had satisfactorily reviewed it. The parties were given opportunity to mutually resolve their dispute to no avail.

The parties confirmed that a primary issue in their applications is the survivability of the tenancy in respect to the Notice to End. But in fact there are numerous other claims listed by the tenant in their application. One of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). It is not possible within this context to deal with an array of issues of concern in one hearing. Accordingly, hearings are generally limited to issues that are related in fact and law. I determined during the hearing that I would not deal with the all of the issues placed on the tenant's Application in this hearing. Not all the claims are sufficiently related to the main issue of whether or not the tenancy will continue. The tenant's remaining claims are therefore dismissed pursuant to Rule 2.3, with liberty to re-apply. That is, if the parties cannot mutually resolve their other issues it is available to the tenant to file a new application in respect to their claims for a Monetary Order or other issues which remain relevant.

Both parties were given opportunity to present relevant evidence and testimony in respect to their applications respecting the Notice to End in this matter and to participate

in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is there *sufficient* cause to end the tenancy?

The burden of proof lies with the landlord that they issued a valid notice to end.

Background and Evidence

The parties submitted a copy of the Notice to End. The Notice was issued for the following reasons pursuant to Section 47(1)(d)(i) and 47(1)(e)(iii) of the Act;

Tenant or a person permitted on the property by the tenant has

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

and

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that

- *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord*

The landlord **waived** their reliance on the second reason listed on the Notice to End [Section 47(1)(e)(iii)]. The tenant disputes the validity of Notice to End.

The relevant evidence of the landlord claims the tenant has engaged in harassment by texting them numerous times of the day regarding heating of the basement rental unit. The landlord testified that the constant texting has stressed them and made them feel uncomfortable. Both parties provided a series of text messages into evidence in support of the referenced text communication. The landlord provided insight into their reason for issuing the Notice to End stating that the Notice to End is the next step to avoid further stress and resentment.

The parties explained that the tenant resides in the basement of the residential property and the landlord resides upstairs. The landlord controls the primary heat source (forced furnace) for the entire house, but of relevance, the heat for the basement rental unit. The tenants claim they were advised by the Branch that under their circumstances in

which they do not control the thermostat they should contact the landlord to manage their comfort level when required as the landlord controls the thermostat. The parties agreed that the tenants also have an electric heater to augment their need for heat, but the tenant claims it is insufficient to heat the entire basement unit and that their heat invariably just goes upstairs in the 1960s era house and they end up heating the whole house. Alternatively, once the landlord raises the heat the tenant will then text the landlord to turn it down if it becomes too hot. Adding to the parties' dispute is that more recently the parties agreed the tenant would be 50% responsible for the electric utility and therefore hesitant to consume electricity. The tenant claims that in previous years the landlord paid 100% of the electric utility.

Analysis

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for the stated reason(s) and altogether establishing *sufficient* cause to end the tenancy.

I accept that the tenant has an alternative source for heat and according to their evidence they seem to require more electric heaters to make their basement unit comfortable. I find that the landlord controls the primary heat from their upstairs unit and further reaps the rewards of the tenant's heating below them. However, I do not accept that this is an opportunity for the tenant to engage in escalating texts. I find that if there is a silver lining it is that the tenant is only 50% responsible for the electricity.

I also accept the landlord's feeling of being stressed and uncomfortable from receiving many demands on them to continually adjust the primary heat source, especially given the increasingly cold temperatures of the season. However, this is not an issue that is unknown to the landlord. They control the heat. I do not accept the landlord's reasoning that evicting the tenant is the appropriate "next step" to avoid further stress and resentment for both parties. But moreover, I find the landlord has not proven they have *sufficient* cause to end the tenancy, and as a result

I Order the Notice to End dated October 31, 2017 with an effective date of November 30, 2017 cancelled and of no effect, with the result that the landlord's application is dismissed.

The landlord is at liberty to issue a new valid Notice to end for *sufficient* cause.

The tenant has come perilously close to losing their tenancy; and, together with the landlord, is cautioned to use more constructive methods to mutually resolve their mutual

problem regarding the heating.

As the tenant was successful in their application they are entitled to recover their filing fee.

I Order that the tenant may deduct \$100.00 from a future rent in satisfaction of their filing fee.

Conclusion

The tenant's application is granted in the above terms. The landlord's application is dismissed without leave to reapply.

The landlord's Notice to End is set aside and is of no effect. The tenancy continues.

The balance of the tenant's claims on application is dismissed with leave to reapply.

This Decision is final and binding.

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: January 02, 2017

Residential Tenancy Branch