



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking cancellation of the One Month Notice to End Tenancy for Cause (the “One Month Notice”) and an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement.

The hearing was convened by telephone conference call and was attended by the Tenant D.M. and the Landlord, both of whom both provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be mailed to them at the addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that I did not have a copy of the One Month Notice. I accepted testimony from both parties regarding the form and content of the One Month Notice and requested that a copy be sent to the Branch no later than 4:30 P.M. on the date of the hearing. I advised the parties that if a copy was not received, I would render my decision without consideration of it.

As a copy of the One Month Notice which matched the testimony provided by the parties in the hearing was received within the timeframe noted above, I have accepted it for consideration in this matter.

Preliminary Matter #2

Although the Landlord acknowledged receipt of the Tenants evidence, the Tenant disputed receiving all of the Landlord's evidence. The Landlord testified that her evidence package contained a letter dated September 27, 2017, two pages of handwritten submissions, a note from the Tenants to the Landlord, a complaint letter dated October 20, 2017, a complaint letter dated January 16, 2017, , a photocopy of a returned envelope, and 13 photographs. The Landlord testified that this evidence package was placed in the Tenants' mailbox on February 15, 2018.

Although the Tenant acknowledged receipt of the package on February 15, 2017, he testified that it contained only six photographs, the handwritten letter dated September 27, 2017, and the two handwritten pages of submissions. As the Landlord did not provide any evidence to corroborate her testimony that the remaining documents were served on the Tenants, I find that the Landlord has failed to establish, pursuant to rule 3.16 of the Rules of Procedure, that the remaining photographs, the note from the Tenants to the Landlord, the copy of the returned envelope, or the two complaint letters were served on the Tenants. As a result, I have excluded this evidence from consideration in this matter.

Issue(s) to be Decided

Are the Tenants entitled to an order cancelling the One Month Notice under the *Act*?

If the Tenants are not successful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Are the Tenants entitled to an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement?

Background and Evidence

The parties agreed that there was no written tenancy agreement in place and that the tenancy began in October of 2016. The parties also agreed that the Tenants rent the

basement suite of the Landlords home and that the Landlord resides on the main level of the home.

The One Month Notice in the documentary evidence before me, dated November 24, 2017, has an effective vacancy date of December 31, 2017, and indicates the following reasons for ending the tenancy:

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

Although much of the details of cause section was illegible, the portions that I could read stated that the Tenants were unable to pay full rent for some time until a social services agency took over the rent payments for them in February of 2017, that the Tenants have destroyed the back yard, and that one of the Tenants is running a woodworking business out of the suite and back yard without permission.

In the hearing the Tenant confirmed that they received the One Month Notice on November 28, 2017, as the Landlord had posted it to their door.

Although significant testimony was provided by both parties regarding the tenancy in general as well as the grounds for ending the tenancy listed on the One Month Notice; only the relevant evidence and the positions of the parties are summarized below.

The Landlord stated that the Tenants have significantly interfered with or unreasonably disturbed her by running very loud woodworking tools at all times of day and night, which affects her sleep, enjoyment of her home, and causes her headaches. She testified that the Tenants have also disturbed the neighbours with this activity and that despite being advised to stop by both her and the neighbours, the behavior has continued. The Landlord testified that she received two complaint letters from her neighbours regarding these disturbances; however, as stated in the preliminary matters section of this decision, this evidence has not been accepted for consideration in this matter. The Landlord testified that she has not called any witnesses as she believed the complaint letters would be accepted and that there is no police evidence regarding the noise disturbances as she was attempting to deal with the issue on her own.

The Tenant acknowledged that they do woodworking for a hobby and that they have on one occasion been advised by a neighbour to stop late at night. However, the Tenant testified that they stopped running the woodworking tools when asked to do so and

have not had any further complaints as they do not run the tools every day and only use them during reasonable daytime hours.

The Landlord also testified that the Tenants have engaged in illegal activity on the premises such as running a woodworking business without permits, vandalism, and selling drugs. The Landlord did not submit any documentary evidence to establish that the woodworking being completed by the Tenant is illegal and when asked if the activity was damaging the property she stated that it was not causing any physical damage. The Landlord testified that the Tenants threw hot chocolate on her window and refused to allow her to wash it off until police arrived, which is vandalism. Further to this the Landlord stated that she suspects drug activity as there are people coming and going from the property at all hours and there was an attempted home invasion in the Tenants rental unit by people she suspects are aware of or involved in the drug activity. Despite the testimony from the Landlord that the Tenants are somehow responsible for the home invasion, the Landlord acknowledged that she had no evidence of drug activity or any evidence that the Tenants knew or invited the intruders onto the property.

The Tenant denied that they or anyone invited onto the property by them has engaged in illegal activity. The Tenant agreed that there was an attempted home invasion but stated that they did not know the assailants and replaced the door that was damaged during the break-in. The Tenant denied that there was any drug activity occurring on the premises and argued that simply because they have guests over or come and go from their unit as they please, does not mean they are dealing drugs. The Tenant also denied running a business and stated that although he does do woodworking on the property, it is only a hobby and that he only occasionally sells items. Further to this, the Tenant stated that his woodworking hobby has not caused any damage to the property. In support of his testimony, the Tenant provided photographs showing work done to maintain and improve the property during their tenancy.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenants were served with the One Month Notice on November 28, 2017, the date they acknowledge receiving it.

Section 47 of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or engaged in illegal activity that has or is likely to cause damage to the Landlord's property.

The ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove they had sufficient cause under the *Act* to issue the notice. Having carefully reviewed the evidence before me from both parties, I find that for the following reasons the Landlord has failed to establish, on a balance of probabilities, that they had cause to end the tenancy under section 47 of the *Act*.

Although the Landlord testified that the Tenants are causing significant noise disturbances on a regular basis, she did not call any witnesses and no documentary evidence was accepted for consideration to corroborate this testimony. The Tenant denied these allegations.

The Landlord alleged that the Tenants or persons permitted on the property by the Tenants have engaged in illegal activity that has caused or is likely to cause damage to the property. Residential Tenancy Branch Policy Guideline (the "Policy Guideline") 32 states that the party alleging the illegal activity has the burden of proving that the activity is illegal and that the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, a legible copy of the relevant statute or bylaw. Policy Guideline 32 also states that in considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration is given to such matters as the extent of damage to the landlord's property and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

As the Landlord failed to provide documentary evidence to establish that the woodworking being completed by the Tenant is illegal, I find that the Landlord has not satisfied me that it is. Further to this, the Landlord acknowledged in the hearing that this activity is not causing any damage to the property, which was one of the requirements for the ground stated for ending the tenancy on the One Month Notice. The testimony provided by the Landlord regarding the Tenants' involvement in the break-in and drug activity is purely speculator in nature. As a result, I find that the Landlord has not satisfied me, on a balance of probabilities, that the Tenants are engaged in drug activity on the premises or in the rental unit, or that they were any way involved in the break-in at their rental unit.

Although I accept that the Tenants may have thrown hot chocolate onto the Landlord's window on one occasion, the Landlord stated that she was able to wash the hot chocolate off and as a result, there was no damage to the property. Based on the above, I find that the Landlord has not satisfied me that the extent of damage caused by this incident, if any, is sufficiently serious to warrant ending the tenancy.

As a result of the above, I order that the One Month Notice is cancelled and of no force or effect.

Conclusion

The One Month Notice is cancelled and of no force or effect. As a result, I order that the tenancy 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: March 2, 2018

Residential Tenancy Branch