



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC FF

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act*;
- an Order directing the landlords to comply with the *Act* pursuant to section 62 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenants and the landlords attended the hearing by way of conference call. The tenants were represented at the hearing by tenant, R.N (the "tenants"), while the landlords were represented at the hearing by landlord, E.J. (the "landlords"). All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenants explained that a copy of the landlords' 1 Month Notice to End Tenancy was posted on their door on January 3, 2018. Pursuant to section 88 of the *Act*, the tenants are found to have been duly served with the landlords' 1 Month Notice.

The landlords acknowledged receipt of the tenants' Application for Dispute Resolution by way of Canada Post Registered Mail. Pursuant to section 89 of the *Act*, the landlords are found to have been served with the tenants' Application for Dispute Resolution.

Issue(s) to be Decided

Can the tenants cancel the landlords' 1 Month Notice?

Should the landlords be directed to comply with the *Act*?

Can the tenants recover the filing fee?

Background and Evidence

The landlords explained that this tenancy began on January 31, 2014. Rent was \$1,800.00 at the outset of the tenancy and a \$900.00 security deposit collected, continues to be held by the landlords.

The landlords explained they served the tenants a 1 Month Notice for Cause citing the following reasons –

- *Tenant has allowed an unreasonable number of occupants in the unit/site*
- *Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord*

The landlords argued that the tenants had allowed their daughter to live in the rental unit without their permission, and that this was now causing a disturbance to the other occupants of the rental home. The landlords said that the daughter had lived in the rental unit since January 2, 2018. The landlords explained that this extra person in the rental property had led to increased conflicts with the other residents, and they argued that the tenants were violating the terms of their rental agreement because the rental unit was only meant to be occupied by three people.

The landlords said that the second part of their 1 Month Notice, concerned complaints they had received from the other occupants of the rental home regarding conflicts which had emerged through the tenancy. Specifically, the landlord cited complaints received in; October 2014, August & December 2016, February, March (x2), July, August and November 2017 and January 2018. The landlords said that several verbal warnings were issued to the tenants and that a meeting was held between the parties following receipt of the first complaint in October 2014. The landlords said the purpose of this meeting was to try and negotiate a settlement amongst the parties.

The landlords explained that the majority of the complaints they had received from the other residents, concerned use of the laundry, a fan, inappropriate storage of items and other general conflicts.

The tenants disputed all aspects of the landlords' 1 Month Notice. They acknowledged that their daughter had been living with them since January 2, 2018 but they argued that she was living with them temporarily as she was facing an emergency situation. The tenants dismissed the landlords' argument that there were "too many" people living in the unit, explaining that it was a three bedroom unit which currently housed four people (husband/wife/daughter 1/daughter 2). They explained that the unit was 1500 square feet and was self-contained other than a shared laundry and garage.

In addition to their application seeking a dismissal of the 1 Month Notice, the tenants sought Orders directing the landlords to comply with the *Act*. The tenants argued that the landlords had failed to provide them with quiet enjoyment of the rental unit and had failed to intervene in disputes which had arisen between the various occupants of the property. The tenants cited several issues they felt were violations of the *Act* including an illegal barbecue, parking which contravened city bylaws, attempts to illegally raise the rent of some of the other occupants in the property, the unjust issuance of a notice to end tenancy, and a failure to adequately address issues around storage and appropriate use of the garage/storage area.

Analysis

The landlords issued a 1 Month Notice because it was alleged that the tenants had; permitted an unreasonable number of persons to occupy the rental unit, and had significantly interfered with or unreasonably disturbed another occupant or the landlord. I will examine these allegations individually starting with the issues surrounding an unreasonable number of occupants.

During the hearing, the parties both acknowledged that the tenants' daughter was currently residing in the rental unit. The landlords argued that this daughter was not a named person on the tenancy agreement, and that the tenants therefore had an unreasonable number of persons in the rental unit. The tenants argued that they were providing temporary shelter for their daughter while she was experiencing personal strife. At the hearing it was explained that the tenants along with their two daughters occupy a three bedroom, 1500 square foot unit. I find the landlords argument that the tenants are housing an "unreasonable" number of persons to be baseless.

I note the tenancy agreement submitted to the hearing does not contain any addendums that specifically state that any additional occupants other than the ones listed on the tenancy agreement are prohibited, and I find that four people living in a

three bedroom rental unit which is 1500 square feet to be an acceptable number of persons occupying such a space. Furthermore, no evidence was presented by the landlords that four people in a three bedroom unit led to any health or safety issues, or led to an unsanitary living environment. For these reasons, I dismiss this portion of the landlords' notice.

The second portion of the landlords' application concerns allegations that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlords cited numerous occasions when these disturbances are alleged to have occurred but failed to provide any detail regarding the frequency, severity or details of the complaints they had received from the other occupants. Furthermore, the landlords supplied only one complaint from another occupant. This complaint contained in an email from tenant S.I. failed to provide sufficient detail regarding the frequency or nature of the complaints. S.I.'s email described one instance of a complaint regarding a fan, a complaint of laundry being done at an inappropriate hour and accounts of dog waste not being collected. I find that the landlord has failed to show how these issues described by S.I. are *significant* interferences. The landlords have described issues which are typical of a living arrangement where numerous persons share a space and are forced to cohabitate with persons unknown to them. For these reasons, I dismiss this portion of the landlords' 1 Month Notice.

The landlords' 1 Month Notice is dismissed in its entirety. This tenancy shall continue until it is ended in accordance with the *Act*.

In addition to their application dismissing the landlords' 1 Month Notice, the tenants have applied for an Order directing the landlords to comply with the *Act*. Specifically, they argued that the landlords have failed to provide them quiet enjoyment of the rental unit, and to adequately address the conflicts they have had with other occupants of the property. Furthermore, the tenants sought orders preventing other occupants of the property from having a barbecue, from parking in the alleyway and preventing from landlords from allegedly illegally raising the rent of some other occupants on the property. Based on the oral testimony presented at the hearing I find that the tenants failed to adequately establish that the landlords had failed to allow them to enjoy quiet enjoyment of the rental unit. Some of the issues raised fell beyond the scope of the *Act*, in particular the claims regarding the barbecue and parking in the alleyway, while other issues cited by the tenants lacked sufficient detail regarding complaints they had regarding other tenants and the landlords' failure to act reasonably. Finally, any issues that other tenants have with the landlords should be addressed by those tenants themselves. For these reasons, I dismiss this portion of the tenants' application.

Both parties are reminded to adhere to the *Act*, in particularly section 28 which provides all tenants the right to quiet enjoyment of their rental unit.

As the tenants were partially successful in their application, they may recover the \$100.00 filing fee from the landlords. In lieu of a monetary award, I allow the tenants to withhold \$100.00 from a future rent payment on **ONE** occasion.

Conclusion

The tenants were successful in their application to cancel the landlords' 1 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenants' application directing the landlord to comply with the *Act* is dismissed.

As the tenants were partially successful in their application, they may recover the \$100.00 filing fee from the landlords and may withhold \$100.00 from a future rent payment on **ONE** occasion.

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