Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenants' 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 assistant, 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. Tenant C.A. (the tenant) indicated that he would be the primary speaker for the tenants

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 Application for Dispute Resolution (the Application) and evidentiary package sent to the landlord by way of registered mail on January 10, 2018. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the tenants' Application and an evidentiary package. The landlord confirmed that he was able to access the audio recordings in the tenants' evidence.

The tenant acknowledged receipt of the landlord's evidentiary package sent by way of registered mail on February 09, 2018. In accordance with section 88 of the *Act*, I find the tenants were duly served with the landlord's evidentiary package.

The tenant testified that a second evidentiary package was served to the landlord by registered mail on February 17, 2018.

Rule 3.14 of the Residential Tenancy Branch (RTB) Rules of Procedure (the *Rules*) establishes that all documentary evidence to be relied on at the hearing must be received by the RTB and the respondent not less than 14 days before the hearing. I find that the tenants should have served the landlord so that they would have received the second evidence package by February 11, 2018 for a hearing on February 26, 2018.

I find the tenants did not serve the landlord with their second evidence package in accordance with Rule 3.14 and that the landlord may be prejudiced by this late service as they did not have a chance to respond to the tenants' second evidence package. For this reason the tenants' second evidence package is not accepted for consideration.

The tenant testified that they received the One Month Notice on January 01, 2018, which was posted to the door of the rental unit on December 31, 2017. In accordance with section 88 of the *Act,* I find the tenants were duly served with the One Month Notice on January 01, 2018.

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?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Written evidence was provided that this tenancy began on February 01, 2015, with a current monthly rent of $1,140.00, due on the first day of each month. The landlord confirmed that he retains a security deposit in the amount of $550.00.

A copy of the signed landlord's One Month Notice dated December 31, 2017, was entered into evidence. In the One Month Notice, requiring the tenants to end this tenancy by January 31, 2018, the landlord cited the following reason 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.*

The tenants provided in their evidence:

- an audio recording dated January 01, 2018, between the tenants and the occupants in the rental unit located above the tenants' rental unit in which the occupant indicates that she has not complained about the tenants to the landlord;
- a copy of an advertisement for the tenants' rental unit dated January 01, 2018;
- an audio recording dated January 02, 2018, between the tenant and the landlord in which the landlord states that he does not have a problem with the tenants but that the upstairs occupants complained and they have been there longer so the landlord chose to evict the tenants;
- a copy of a Christmas card for December 2017, given to the tenants from the upstairs occupants which has a symbol of a heart and the word "always"; and
- a written statement from the tenants indicating that they believe the landlord is trying to evict them in order to obtain increased rent from new occupants.

The landlord provided in their evidence:

- a written statement from the landlord detailing the reasons for the One Month Notice being served to the tenants. In this statement the landlord indicates that he received an e-mail from the upstairs occupants, after a phone conversation on December 31, 2017, regarding the tenants' loud music, the tenants not complying with an agreement to cut grass and the tenants acting in a hostile manner towards the upstairs occupants' son. The landlord states that has no other reasons for issuing the One Month Notice and is not acting in bad faith;
- a copy of the landlord's phone records for December 31, 2017, with all other calls blacked out other than two outgoing calls;
- a copy of an e-mail from the upstairs occupant to the landlord dated January 02, 2018, in which the occupant states, upon the landlord's request, past items of contention with the tenants including loud music at times, not cutting the grass as scheduled and conflict about the occupant's son making noise; and
- two letters of reference for the landlord, one from the upstairs occupant and the other from a past occupant, stating that they have never had any problems with the landlord.

The landlord testified that he has had a few complaints from the upstairs occupants regarding the tenants being rude and aggressive towards the occupants, threatening

their child and not letting the child play outside. The landlord submitted that he has given verbal warnings to the tenants but that there is no record of these verbal warnings. The landlord stated that the tenants record and provide audio evidence of what favours them but do not record the verbal warnings that the landlord has given them. The landlord testified that the tenants and the upstairs occupants share the back yard and that the landlord is worried that the situation will escalate.

The landlord also submitted that the tenant had shouted at the landlord's mom when she was in the back yard.

The tenant testified that he did not threaten the upstairs occupants' child and has never yelled at a kid. The tenant submitted that in the summer of 2015 the child was bouncing a ball outside of the rental unit and that the tenant talked to the child's parents about it, not the child. The tenant testified that there was one occasion of loud music in September 2017 for approximately 10 minutes when the tenant turned it down and that he was never spoken to about this by the landlord or the upstairs occupants. The tenant maintained that there have been no verbal warnings given to the tenants about any incidents.

The tenant submitted that the backyard is mostly a garden with a fence around it and a lock on the fence to prevent the stealing of vegetables. The tenant stated that he did not know who the landlord's mother was and he simply questioned her presence in the back yard.

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 tenants disputed this notice on January 05, 2018, and since I have found that the One Month Notice was served to the tenants on January 01, 2018, I find the tenants have applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find the landlord bears the burden to prove that the tenants have significantly interfered with or unreasonably disturbed the upstairs occupants or the landlord.

I have reviewed all documentary evidence including the affirmed testimony and, on a balance of probabilities, I find the tenants have not unreasonably disturbed the upstairs occupants or the landlord.

I find that in the audio recording between the landlord and the tenant, the landlord states that he has no issues with the tenants indicating that he has only issued the One Month Notice due to the complaints of the upstairs occupants and to prevent any further conflict. The landlord further states in this recording that the reason he is not evicting the upstairs occupants is that they have been there longer. I find that in the landlord's written statement the landlord further states that he has not had any problems with the tenants personally. I find that if there was an issue with how the tenant treated the landlord's mother, it was not addressed with the tenants until the hearing. I further find that it is not unreasonable for the tenant to question a person, who they do not know, about their presence in the tenants' back yard.

I find that the e-mail from the upstairs occupant is very vague and provides no description or details of the incidents that have occurred between the upstairs occupants and the tenants. Regarding the loud music, I find the occupant has not provided any details including times, dates or the duration of the loud music and how it significantly interfered with or unreasonably disturbed the occupants. I further find that there is no indication in the occupant's e-mail or any other evidence provided by the landlord that any incidents of loud music required the landlord or the occupants to address it with the tenants, to have them cease, and that the tenants continued with the unreasonable behaviour.

In the absence of any other details provided by the landlord or the upstairs occupant, I accept the tenant's testimony that the loud music occurred only once for a duration of 10 minutes. I find that one incident of loud music for only 10 minutes is not unreasonably disturbing or significantly interfering with the upstairs occupant or the landlord.

I find that the upstairs occupant states that there is a conflict with the tenants about the upstairs occupants' son making noises but again does not provide details about any incidents that have occurred to which the occupant is referring. I find that the upstairs occupant makes no actual statement that the tenants are threatening their child or that they are concerned about the safety of their child due to the tenants. Based on a

balance of probabilities I find it is unreasonable that, if the upstairs occupants were concerned about the safety of their child due to the tenants' actions, the occupants would not provide more specific information as to the events that occurred which have given them concern. Although the landlord states that the tenants have been rude and aggressive with the upstairs occupants, there is no mention or any indication of that behaviour in the e-mail from the upstairs occupant.

In the absence of any other details from the landlord or the upstairs occupants, I accept the tenant's testimony that there was one incident of noise concerning the child, in the summer of 2015, and that the tenant talked with the upstairs occupants about this issue and not the child. Although this may have been a conflict between the upstairs occupants and the tenants, I find that if it was a major conflict it would have been addressed closer to when the incident occurred and not more than two years after. I find it unreasonable that the upstairs occupants and the tenants would be exchanging friendly holiday cards as recently as December 2017 if there was an existing conflict of significance between the parties and the upstairs occupants were concerned about their son being threatened by the tenants.

I find that there are no details regarding the issue of cutting the grass other than it is not being done as scheduled. I find there is no evidence provided which demonstrate that the issue of when the grass is being cut is significantly interfering with or unreasonably disturbing the landlord or the other occupants.

Therefore, based on a balance of probabilities and the above, I find 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 tenants have been successful in this application, I allow them to recover their filing fee from the landlord.

Conclusion

The tenants are successful in their Application.

The One Month Notice dated December 31, 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 tenants 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: March 15, 2018

Residential Tenancy Branch