



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This decision pertains to the Tenant's application for dispute resolution made on April 20, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks to cancel the Landlord's One Month Notice to End Tenancy for Cause (the "Notice").

The Tenant and Landlord attended the hearing before me, were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. An advocate (the "Advocate") for the Tenant attended the hearing. The Landlord had a witness who attended briefly to be affirmed, but did not testify during the hearing.

The Advocate testified that the Notice of Dispute Resolution Hearing package (the "Notice of Hearing") was served on the Landlord by way of registered mail on March 26, 2018, and that additional evidence was sent to the Landlord by way of registered mail on May 3, 2018. The Advocate testified that the online Canada Post registered mail website indicated that the Notice of Hearing was picked up on May 4, 2018, and the evidence was picked up on May 7, 2018. The Landlord did not raise any issues with respect to service.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application will be considered in my decision.

Issue to be Decided

Is the Tenant entitled to a cancellation of the Landlord's Notice?

Background and Evidence

The Landlord testified that the Tenant commenced tenancy of the rental unit—a trailer situated on a parcel of land surrounded by forest—on October 15, 2011. There is a

written tenancy agreement in effect which stipulates monthly rent of \$800.00, which was raised to \$829.60 in the Fall of 2017. Rent is due on the 15th of the month. The Tenant paid a security deposit of \$400.00.

The problems that gave rise to the Landlord's issuing the Notice, the Landlord testified, began in early 2017. The Landlord testified that the property had a rat infestation and that the rats chewed through water pipes located on the underside of the trailer. In March 2017, the Landlord undertook two emergency repairs of the piping, and at that time called in an exterminator to deal with the rat infestation. The exterminator visited the property over a period of three months, laying down traps, and taking away the exterminated rodents. The Landlord testified that plumbers refused to come and fix the piping due to a large amount of rat and cat feces underneath the trailer.

In May 2017, the Landlord's daughter came to repair the leaking pipes, and to repair and replace pink insulation underneath the trailer. The leaking pipes caused a lot of water to spray up and soak the insulation. The Landlord testified that it was "a disgusting job" and that their daughter was sprayed with rat feces-contaminated water. Repairs were completed in September 2017.

In September 2017, the Landlord attended to the property for an inspection, and during the inspection noticed that the Tenant had kept a large quantity of pop bottles, pop cans, liquor bottles, and unknown types of garbage in a nearby storage shed. The shed is located about 25 feet away from the trailer. The Landlord submitted that the storage of the pop and liquor bottles caused the significant rat infestation, which resulted in the pipe and insulation damage. The Landlord testified that rats like to chew through the pipes to gain a source of water. The Landlord was unaware of the existence of the pop and liquor bottles until the inspection. The Landlord testified that they had several conversations with the Tenant regarding the collecting of the pop and liquor bottles.

The Landlord testified that the trailer is primarily heated with wood, and that there is also an electric heater for one of the rooms. The Tenant is supplied with wood for heating the trailer, and the Landlord testified that the Tenant had burned through all the supplied wood by September 2017. The Landlord said that the Tenant is required to keep the trailer at a certain temperature to prevent the pipes from freezing during cold weather, and that the Tenant was negligent in burning all the wood before winter. The Landlord became aware of the wood burning issue through their father, who brought it to the Landlord's attention.

The Advocate asked the Landlord whether they knew how old the trailer's plumbing is,

and submitted that the hot water tank is old and that the plumbing is old, and that the leaking water was because of the old hot water tank. The Landlord did not know how old the tank or piping was.

Regarding the pop bottle storage issue, the Advocate referred me to an email between the Landlord and the Tenant dated October 18, 2017, wherein it was confirmed that the pop bottles and the shed had been cleaned up.

Regarding the wood, the Tenant disagreed with the Landlord's position regarding the wood being all burned, and testified that they never ran out of wood.

Regarding the rat infestation, the Tenant testified that they spoke with the exterminator "numerous times" during his visits and asked him whether there was anything that they, the Tenant, could do to prevent the rats from returning. According to the Tenant, the exterminator said that 2017 was a particularly bad year for rat infestations, and that due to the physical nature of the property—forested, nearby pond—rats would be attracted to the area. The Tenant testified that the exterminator also said that rats are attracted to pink insulation, as it provides warmth. The exterminator said that, according to the Tenant, there was nothing that the Tenant could have done to prevent the rats from coming. The rats stopped coming shortly before the exterminator stopped coming, in July or August 2017.

No rats have since been seen under the trailer.

In rebuttal, the Landlord argued that there were "significant errors" in the Advocate's submissions, but that given the length of time of the hearing, that they would not be able to speak to all those errors. The Landlord reiterated that the pipes were not leaking before the rats came, and that the exterminator would not have seen the storage shed full of pop and liquor bottles. The Landlord submitted that rats are attracted to fruit, which is why you need to pick ripe fruit off the ground. The smell in the shed was overwhelming, like fermenting fruit, the Landlord testified.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

The Landlord submitted that they issued the Notice under sections 47 (1) (d) (i) and 47 (1) (d) (iii), which read as follows:

- 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [. . .]
- (d) the tenant or a person permitted on the residential property by the tenant has
- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, [. . .]
- (iii) put the landlord's property at significant risk;

The Landlord argued that the Tenant significantly interfered with and unreasonably disturbed the Landlord by leaving pop and liquor bottles in a shed, which resulted in rats coming onto the property and gnawing through the trailer's water pipes, which resulted in the Landlord having to travel to the property to effect emergency repairs. The requirement to travel to the property and repair what was described as "a disgusting job" is the significant interference or unreasonable disturbance being alleged. The Landlord also argued that the Tenant's failure to take any action regarding the storing of pop and liquor bottles placed the Landlord's property at significant risk due to the rats being attracted to the trailer.

While the Landlord argues that the rats—and all the ensuing damage to the water pipes and insulation—were a result of the Tenant storing pop and liquor bottles in the shed, there is insufficient evidence linking the existence of rats living under the trailer to the stored pop and liquor bottles in a shed located 25 feet away. The testimony of both parties confirmed that the rats were gone by September 2018, and that the cleanup of the shed occurred in October 2018. Further, it does not appear, based on the testimony

of the parties, that any rats have since returned to live under the trailer in the last eight months.

The Tenant testified that, based on conversations they had with the exterminator, that rats are attracted to forested areas and near bodies of water, such as the pond. According to the Tenant, there is nothing that they could have done to prevent the rats from coming.

Taking into consideration all the evidence and testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has not met the onus of proving that the Tenant's actions of storing pop and liquor bottles resulted in the attraction of rats to the trailer, of which lead to damaged pipes and insulation. While the repair of the damage was undoubtedly an undesirable activity, it is not a significant interference or unreasonable disturbance that was a result of any action or inaction on the part of the Tenant. As well, I note that the repair and maintenance of the rental unit by the Landlord is required under the Act. Nor do I find, based on the evidence and testimony, that the action or inaction of the Tenant in respect of the storing of pop and liquor bottles put the Landlord's property at significant risk.

Regarding the matter of firewood being burned, while the parties submitted into evidence a copy of the tenancy agreement, including an addendum, there is nothing in either document that prohibits the Tenant from burning all the firewood. The addendum refers to the firewood and that the Tenant has access to it for heating purposes. The Landlord submits that the Tenant is obligated to ensure the trailer's water pipes do not freeze during the winter, and that burning through all the wood before winter was breaching that obligation. However, the Landlord did not submit any evidence or testify about any water pipes bursting during the winter. The parties disagreed about whether or not the firewood had all been burned, but no evidence was tendered that suggested the pipes froze and burst over the winter.

For these reasons, and taking into consideration all the evidence and testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has not met the onus of proving that the Tenant's actions of allegedly burning through all the firewood put the Landlord's property at significant risk.

Therefore, taking into consideration all the evidence and testimony before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has not met the onus of proving the grounds on which the Notice was based.

As such, the Landlord's Notice, dated April 4, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

Conclusion

The Landlord's Notice, dated April 4, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will 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: May 18, 2018

Residential Tenancy Branch