



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

The Application for Dispute Resolution filed by the Tenant(s) seeks an order to cancel the one month Notice to End Tenancy dated May 12, 2018

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was served on the Tenant(s) by posting on May 12, 2018. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by each party was sufficiently served on the other.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant(s) are entitled to an order cancelling the one month Notice to End Tenancy dated May 12, 2018?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on March 31, 2018, end on April 1, 2019 and become month to month after

that. The rent is \$985 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$493 at the start of the tenancy.

The landlord seeks to end the tenancy based on the following evidence:

- She received a complaint from a tenant about a disturbance that occurred on the Tenant's balcony on April 16, 2018 which involved a heated conversation between the two tenants. The police were called as a result.
- As a result of this complaint she issued a caution to the Tenants.
- She asked the Tenants for an explanation. DM attended and gave her an explanation. However, WC failed to respond to her texts and request to provide an explanation.
- The landlord received reports from other residents about a dispute between the two Tenants that occurred on May 10, 2018. They did not wish to have their names identified. WC failed to respond to her request for an explanation. The police were called a second time.
- The rental property is for those 50 years or over.
- Landlord's Witness 1 testified that he is a Tenant living on the third floor of the rental property. He was asleep on April 16, 2018 and the disturbance woke him up. It was about 9:00 p.m. He witnessed the two tenants engaged in a heated argument. He subsequently went back to sleep. He did not call the police. He was not disturbed by the second incident. However, he did see the police car attend the next day.

The tenant WLC gave the following testimony:

- DTM was a roommate. He is no longer living in the rental unit.
- She acknowledged being involved in a dispute with DTM on April 20, 2018. DM left the rental unit that night and he called the police.
- On May 10, 2018 DM assaulted her and she left the rental unit and stayed with her son
- Her brother is presently staying with her.
- She works full time and pays her rent.
- She was not responsible for the incidents.

Grounds to End the Tenancy:

The one month Notice to End Tenancy Alleges the following grounds:

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

- significantly interfered with or unreasonably disturbed another occupant or the landlord
...
- Tenant has engaged in illegal activity that has, or is likely to:
...
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Tenant's Application:

After carefully considering all of the incidents I determined the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- The evidence presented by the landlord was insufficient to establish that the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or that the Tenant has engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- The landlord was not present at the time of both incidents.
- Witness #1 was disturbed at the time of the first incident. However, he testified that after witnessing the heated conversation he was able to go back to sleep. He was not disturbed by the second incident.
- The landlord testified she received complaints about the second incident from other residents. However the other residents did not provide evidence and did not attend the hearing. I determined the landlord failed to provide sufficient evidence that other residents were unreasonably disturbed as there is insufficient evidence in the absence of a statement or oral testimony from those witnesses.

Determination and Orders:

As a result I determined that the landlord has failed to establish sufficient cause to end the tenancy. I ordered that the one month Notice to End Tenancy dated May 12, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

.

Landlord's Application - Order of Possession:

I dismissed the landlord's application for an Order of Possession and to recover the cost of the filing fee as I have ordered that the one month Notice to End Tenancy be cancelled and as a result there is no basis for the granting of the landlord's application.

This decision is final and binding on the parties.

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: July 13, 2018

Residential Tenancy Branch