



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, DRI

Introduction

On June 4, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking that a 1 Month Notice to End Tenancy for Cause be cancelled; for emergency repairs, and to dispute an illegal rent increase.

The hearing was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue is to determine whether or not the tenancy is ending based on the issuance of a 1 Month Notice To End Tenancy For Cause. The Tenant's other claims are dismissed with leave to reapply.

Issues to be Decided

- Does the Landlord have cause to end the tenancy and is the Landlord entitled to an order of possession?

Background and Evidence

Both parties testified that the tenancy began on February 1, 2016, as a month to month tenancy. Rent of \$936.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$400.00.

The rental property contains three units. The Landlord lives in a unit above two rental suites.

The Landlord testified that the Tenant has been unreasonably disturbing the Landlord and the other Tenant on the rental property by making noise and smoking on the rental property.

The Landlord testified that when she rented the unit to the Tenant, the unit was advertised as a non-smoking unit. She testified that the Tenant told her that he was a non-smoker. She testified that she entered into the tenancy agreement based on the Tenant saying he is a non-smoker. The Landlord testified that the Tenant started smoking on the property within two weeks of moving in.

The Landlord testified that she previously issued a notice to end tenancy due to concerns she was having with the Tenant making noise and smoking on the property. The Landlord rescinded the notice based on promises made by the Tenant to improve.

The Landlord testified that the Tenant is very loud and she can hear him yelling and swearing at his son. The Landlord testified that her children can hear the yelling and swearing.

The Landlord testified that the other Tenant on the rental property has complained to her about the noise from the yelling and swearing of the Tenant.

The Landlord testified that the Tenant has recently started to smoke marijuana on the rental property. She testified that her and her children are affected by the smell. The Landlord testified that the other Tenant confirmed to her that they could smell the marijuana.

The Landlord testified that she is being unreasonably disturbed and she issued a 1 Month Notice To End Tenancy For Cause dated May 31, 2018. She testified that she served the 1 Month Notice to the Tenant in person on May 31, 2018.

The reason for ending the tenancy within the 1 Month Notice is as follows:

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

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord

The Landlord provided documentary evidence in support of her testimony.

The Landlord provided a copy of the advertisement from 2016, showing it advertised as non-smoking. The Landlord provided a copy of the tenancy agreement that includes a statement “no smoking or drugs”.

The Landlord provided emails from January and February and May of 2018, regarding concerns she had with the Tenant regarding noise and banging in the rental unit.

The Landlord provided an electronic audio file recording of noise coming from the Tenant’s unit.

The Landlord provided a copy of a letter from a neighbour dated July 10, 2018, that indicates the Tenant is smoking on the property and has been noticed by them to be loud and yelling on the property.

In response to the Landlord’s testimony, the Tenant testified that when he is loud he is speaking Jamaican and nobody can understand what he is saying. He acknowledged that he gets loud with his son and that his son sometimes slams doors and smashes things.

The Tenant submitted that he has a federal licence to smoke marijuana. He submitted that he rolls his weed inside; however, he smokes away from the unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord has provided sufficient evidence to establish that the Landlord and another occupant have been unreasonably disturbed by the Tenant’s yelling, playing loud music, and smoking on the property.

I find that the Tenant’s noise and smoking have significantly interfered with or unreasonably disturbed another occupant and the Landlord.

The Tenant’s application to cancel the 1 Month Notice is dismissed. The tenancy is ending.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 1 Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession.

The Landlord is granted an order of possession effective no later than 1:00 pm on July 31, 2018, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application to cancel the 1 Month Notice To End Tenancy For Cause dated May 31, 2018, is dismissed.

The Landlord is granted an order of possession effective no later than 1:00 pm on July 31, 2018, after service on the Tenant.

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 23, 2018

Residential Tenancy Branch