



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC CNC OLC FF

Introduction

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

The tenant applied for

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

The landlords applied for:

- an Order of Possession based on their 1 Month Notice pursuant to section 55 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlords attended the hearing. The tenant was represented at the hearing by her counsel, M.T. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenant confirmed receipt of the landlords' 1 Month Notice and evidentiary package, while the landlords confirmed receipt of the tenant's application for dispute resolution and evidentiary package. I find both parties were duly served under the *Act* with all documents pertinent to their applications.

Issue(s) to be Decided

Can the tenant cancel the landlords' Notice to End Tenancy? If not, are the landlords entitled to an Order of Possession?

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

Can the landlords recover the filing fee from the tenant?

Background and Evidence

Testimony provided to the hearing by landlord R.R. explained that this tenancy began on April 5, 2017. Rent is currently \$1,500.00 per month, after it was lowered from an original rent of \$1,600.00 per month. A security deposit of \$800.00 paid at the outset of the tenancy continues to be held by the landlords.

On June 2, 2018 the landlords served the tenant with a 1 Month Notice to End Tenancy for Cause. The reason cited on the 1 Month Notice is listed 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 tenant has applied to cancel this notice, while the landlords have applied for an Order of Possession. During the hearing, the parties agreed an incident occurred on April 2, 2018 between the tenant and landlord A.T. which lead the landlords to issue the Notice to End Tenancy. The tenant acknowledged that she had swatted landlord A.T.'s phone from her hand after the landlord approached her at the door of the rental unit to collect rent. Landlord A.T. was filming this interaction and this video was uploaded as part of the landlord's evidentiary package.

Counsel for the tenant argued that this was a one-time event that occurred which was precipitated by a series of acrimonious events directed towards the tenant by landlord A.T. The tenant submitted a copy of the general occurrence dispute written by the local police department. This report states, "Police Constable K. determined that there was no assault. Police Constable K. mediated between X and K.M. Ultimately, K.M. understood X's reason for recording the interaction, and X understood K.M. reason for not wanting to be recorded in her private residence." Counsel sought a dismissal of the landlord's 1 Month Notice.

In addition to the above described applications, the tenant has applied for an Order directing the landlords to comply with Section 28 of the *Act*. This section protects a tenant's right to quiet enjoyment of the rental unit. The tenant alleged that she has

suffered harassment at the hands of landlord A.T. As part of the tenant's evidentiary package, several video recordings, along with numerous photographs were submitted to support her allegations. Furthermore, the tenant argued that the condition inspection report of the unit was not completed or returned to her within 15 days of the start of the tenancy. Counsel argued that the condition inspection report which was submitted by the landlords was completed on two separate dates and should therefore be deemed invalid.

Analysis

I will begin my considering the Notice to End Tenancy and will then turn my attention to the tenant's application for Orders directing the landlords to comply with the *Act*.

The landlords allege that the tenant or a person permitted on the property by tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. As part of their evidentiary package the landlord submitted a video of the incident that occurred on April 2, 2018 between landlord A.T. and the tenant. The question for me to consider is whether the action depicted should be a *significant interference*.

After having considered the testimony of the landlords, the submissions from the counsel for the tenant and having reviewed all related documentary evidence, I find that the landlords have failed to show that the tenant's actions of April 2, 2018 were a *significant interference*. While I have no doubt that landlord A.T. was mostly likely upset by the tenant's actions, I accept the submissions of the tenant's counsel that this was a one-time event that occurred against the backdrop of an acrimonious relationship between A.T. and the tenant. The landlords did not present any evidence related to other incidents which had transpired between the parties and the landlords failed to show how they were interfered with by this incident. Landlord R.R. stated simply that landlord A.T. is now fearful of the tenant.

I find the police report submitted into evidence by the tenant to be very persuasive. This report supports the argument put forward by counsel for the tenant, that this incident was an isolated event which was precipitated by events which occurred between landlord A.T. and the tenant. For these reasons, I dismiss the 1 Month Notice. The tenant is however cautioned that further aggressive actions towards the landlords may result in a subsequent Notice to End Tenancy being issued.

The second portion of the applications before me concerns the tenant's application for Orders directing the landlords to comply with her right to quiet enjoyment.

Section 28 of the *Act* states, tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance.

This issue is expanded upon in Section 6 of the *Residential Tenancy Policy Guideline* which says, “A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these...Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis of a breach of the entitlement to quiet enjoyment.”

Counsel for the tenant argued landlord A.T. had made a concerted effort to harass the tenant, had acted disrespectfully towards the tenant, and had made the tenant’s overall living situation difficult. Specific submissions were made related to an incident over parking and to rude language directed at the tenant by landlord A.T. In addition, the tenant asked that the condition inspection report be discarded because it was not completed or provided to her within 15 days of the start of the tenancy.

I find that sufficient evidence was presented by the tenant that landlord A.T. had engaged in activity which *directly* caused the tenant to suffer from unreasonable disturbance. The actions described by the tenant were specifically caused by landlord A.T. and do not amount to *temporary discomfort or inconvenience*. The landlords are directed to comply with Section 28 of the *Act* and to respect the tenant’s right to quiet enjoyment. Failure to adhere to this portion of the *Act* may result in the tenant pursuing further relief under the *Act* at a future date.

Section 18(2) of the *Regulations* states, “The landlord must give the tenant a copy of the signed condition inspection report of an inspection made under section 23 of the *Act*, promptly and in any event within 7 days after the condition inspection is completed.” I find that the landlord has failed to adhere to this *Regulation* and that some evidence was presented that in fact the landlord attempted to have the tenant sign a backdated condition inspection report. I find that this condition inspection report dated on its final page April 5, 2018 to be invalid, and one which the landlord cannot rely on following the conclusion of the tenancy.

As the landlords were unsuccessful in their application, they must bear the cost of their own filing fee.

Conclusion

The tenant was successful in her application to cancel the landlord's 1 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The landlords are directed to comply with Section 28 of the *Act* and to ensure that the tenant's quiet enjoyment is respected.

The landlords must bear the cost of their own filing fee.

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 25, 2018

Residential Tenancy Branch