



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACHILLE GEORGE CARDINAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the *Act*) for:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") under Section 47 of the *Act*.

The tenant appeared with his advocate PE ("the tenant"). The landlord appeared with his wife SC and two property managers, DE and CP ("the landlord"). All parties were given the opportunity to present affirmed testimony, to make submissions, to cross examine witnesses, and to submit evidence.

The landlord acknowledged he was personally served on May 30, 2018, with the Notice of Hearing and all evidentiary materials from the tenant. The tenant acknowledged receipt of the evidentiary materials submitted by the landlord. I find the landlord has been duly served in accordance with Section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy in compliance with the *Act*.

Issues to be Decided

- Is the tenant entitled to a cancellation of the One Month Notice under Section 47 of the *Act*;

- If the tenant is not successful in cancelling the One Month Notice, is the landlord entitled to an Order of Possession under Section 55 of the *Act*.

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions, written witness statements, and/or arguments are reproduced here. The principal aspect of the claims and my findings are set out below.

The parties agree on the following facts:

- The parties entered into a month-to-month residential tenancy agreement starting July 1, 2015, for rent of \$475.00 a month payable on the first day of each month;
- At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$238.50 which is still held by the landlord;
- The tenant was personally served with the landlord's One Month Notice on May 19, 2018;
- The tenant submitted an Application for Dispute Resolution on May 28, 2018 to dispute the One Month Notice;
- A copy of the One Month Notice was submitted into evidence with an effective vacancy date of June 30, 2018;
- In the One Month Notice, the landlord checked the following as grounds for issuance of the Notice:
 - *The 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 continues to reside in the premises.

The essence of the allegation against the tenant concerns an incident that happened on May 17, 2017. The landlord alleged that the tenant had two guests who created a disturbance in the parking lot outside the apartment building by engaging in yelling and unruly/confrontational behaviour.

The landlord testified that he was not actually present when the incident occurred and provided evidence with respect to the grounds for issuance of the One Month Notice primarily through three written statements of other tenants in the landlord's building in which the tenant resides.

The witness BJ stated in his written statement that he heard an altercation but "did not see [tenant] during any of these events".

A second tenant DS submitted a written statement saying he attempted to take pictures of what was happening in the parking lot and that he was physically assaulted by one of the guests there. The witness says the tenant was yelling from his window and was not present.

A third tenant GF submitted a written statement saying he witnessed the event but also does not say the tenant was present. The witness' statement says in part:

“[Tenant] has been known to have parties before and although he receives care his behaviour continues to be a problem I watch him come from the liquor store across the street every second day. He is an alcoholic and a disturbance to the rest of the tenants in his block.

The tenant testified he has not had guests, at any time, who created a disturbance. He denied taking part in the altercation on May 17, 2018. He testified any allegation of his involvement was fabricated by the other landlord's witnesses because of ill-feeling they have towards him. He denied the people concerned were his guests and stated they must have been strangers.

The landlord stated he had not provided any letters of warning to the tenant about his actions that may lead to a notice to end the tenancy.

Analysis

Pursuant to section 88 of the *Act*, and based on the submissions of both parties, the tenant was served with the One Month Notice on May 19, 2018, and brought this application within the ten-day period on May 28, 2018.

Section 47 of the *Act* provides that upon receipt of a One Month Notice, 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, on a balance of probabilities, the grounds for the One Month Notice.

The landlord must now show on a balance of probabilities, that it is more likely than not, that the tenancy should be ended for the reasons identified in the One Month Notice. In the matter at hand, the landlord must demonstrate that the tenant, or a person permitted on the property by the tenant, has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I accept the evidence that a disturbance occurred, but I am not convinced the tenant is the source of the disturbance or that he was involved. The witness' statements point to an altercation occurring in the parking lot when the tenant was not present. I am not persuaded the people involved in the altercation were guests of the tenant or that he participated in the disturbance.

The landlord alleged this latest incident on May 17, 2017, is the last in a line of disturbances caused by the tenant throughout his tenancy. However, there were no records of any previous warning letters the landlord sent to the tenant regarding any perceived disturbance by the tenant, his guests, or persons he permitted on the property. There was no evidence to clearly establish past issues or warning to the tenant regarding his actions or behaviour.

I find the landlord has not met the burden of proof in showing that the tenant allowed people on the property who have significantly interfered with or unreasonably disturbed another occupant or the landlord as set out in the One Month Notice.

Based on the evidence and testimony I heard, I find the landlord failed on a balance of probabilities to establish the cause for ending the tenancy. There is therefore no need for me to consider whether the landlord is entitled to an Order of Possession pursuant to section 55.

I therefore grant the tenant's request for an Order setting aside the One Month Notice.

Conclusion

The tenant is granted an Order setting aside the One Month Notice issued on May 19, 2018.

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: August 8, 2018

Residential Tenancy Branch