



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, LC, PSF, RP, RR
 OPC, FFL

Introduction

This hearing convened as a result of cross applications.

In the Tenant's Application filed August 14, 2018 she sought the following orders:

- an order canceling a 1 Month Notice to End Tenancy for Cause issued on August 3, 2018 (the "Notice");
- an Order that the Landlord
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement;
 - make repairs to the rental unit;
 - provide services or facilities required by law; and,
 - be restricted from entering the rental unit;
- monetary compensation from the Landlord for breach of quiet enjoyment as well as the cost of repairs

In the Landlord's Application filed on August 20, 2018 they sought an Order of Possession based on the Notice and recovery of the filing fee.

The hearing was conducted by teleconference on 11:00 a.m. on October 1, 201. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter—Issues to be Decided

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I find that this claim is not sufficiently related to the balance of the Tenant's claims; accordingly I exercise my discretion and **dismiss, with leave to reapply**, the Tenant's claims for the following:

- an Order that the Landlord
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement;
 - make repairs to the rental unit;
 - provide services or facilities required by law; and,
 - be restricted from entering the rental unit;
- monetary compensation from the Landlord for breach of quiet enjoyment as well as the cost of repairs

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?
3. Should the Landlord recover the filing fee?

Background and Evidence

The residential tenancy agreement was provided in evidence and which confirmed that this tenancy began January 15, 2018. Monthly rent was payable in the amount of \$1,500.00.

The Landlord confirmed that the rental unit is a three bedroom unit on one side of a side by side duplex.

The reasons cited on the Notice are as follows:

- the Tenant has allowed an unreasonable number of occupants in a rental unit;
- the Tenant or a person permitted on the residential property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has caused or is likely to
 - damage to the landlord's property,
 - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - jeopardize or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the Tenant has caused extraordinary damage to a rental unit or residential property;

The Landlord stated that when the tenancy began the Tenant informed him that there would be three adults and two children residing in the unit. He stated that since, and to his knowledge the Tenant has had numerous transient occupants in the rental unit, as well as allowing people to sleep in vehicles on the property. The Landlord stated that the Tenant has had between one and seven other occupants. The Landlord stated that he is currently not aware of who is residing in the rental unit as he does not reside in the community in which the rental unit is located.

The Landlord testified that the primary reason for issuing the Notice was due to a domestic disturbance at the subject rental unit which he claims has significantly disturbed others. He stated that at the end of July 2018 he received information from the tenant in the adjacent rental unit in the duplex (S.) about a disturbance at the subject rental unit. Apparently, the Tenant's friends were moving the Tenant's roommate, C.P., as well as his belongings, from the rental unit. The police were called several times that day due to the conflict between C.P. and the Tenant. The Landlord also confirmed that C.P. was one of the original people who were going to live in the rental unit with his two school aged children and that to his knowledge C.P. was also paying the majority of the rent.

In terms of the alleged illegal activity, the Landlord testified that he has been informed that there has been stolen property on the property, including a 16 foot transport trailer, which the Landlord claimed included the Tenant's belongings.

The Landlord stated that the property is overgrown, the grass is not cut, there is a broken down mini-van in the back yard which the Tenant is using as a tool shed. The Landlord also claimed that the Tenant also has clothes all over the lawn. He submitted photos in evidence in support of these claims.

In response to the Landlord's submissions the Tenant testified as follows.

She stated that she lives in the rental property by herself. She denied that there have ever been 7-8 occupants, and stated that there were only two adults and two kids at the start of the tenancy.

The Tenant stated that the person sleeping in the vehicle was a childhood friend of C.P. who was visiting C.P. She stated that he was intoxicated and could not drive. The Tenant claimed that she has been sober for five years and when C.P.'s friend was intoxicated and couldn't drive she allowed him to sleep in his car as she does not have any drugs or alcohol in her home. She stated that this was a one-time occurrence.

In response to the Landlord's testimony regarding the disturbance at the end of July 2018, the Tenant stated that she gave C.P. notice to end his tenancy. She stated that she was then informed that he was an occupant, not a tenant, and as such the merits of the notice were not addressed at a hearing.

The Tenant further stated that C.P. was dating the other tenant, S. in the duplex and was very upset when he was being moved out and called the police.

The Tenant claimed that when she moved C.P.'s items out of the rental unit, she had six people help and they all moved his items in a non-violent manner.

The Tenant testified that S. was upset that the Tenant was "putting C.P.'s kids on the street" and it was S. who got very upset and caused a disturbance.

In response to the Landlord's submissions regarding the alleged stolen trailer, the Tenant stated that she was out of the province at the time the trailer was brought to the property. She stated that her former roommate, C.P., was present at the time and would know the person who brought the trailer to the property. She confirmed that she found out the trailer was stolen when the police informed her of this. She further claimed that the only reason her items were in the trailer is because she put her items in the trailer to make room to move out C.P.'s items. She further stated that the police removed the trailer and they have not contacted her since.

In response to the Landlord's claims that the Tenant does not care for the yard, the Tenant stated that she cares for the yard and feels that she keeps it to the condition required by the *Act*. She further stated that if the Landlord asked her to do more maintenance than regular mowing she would gladly do so. She denied not picking up after her dog and stated that she has added value to the property. She confirmed that she has her grandfather's van (which she described as having sentimental value) in the backyard which she uses as a tool shed, and would move it if he asked.

The Tenant also stated that the photos of the yard were taken when C.P.'s items were being moved out, hence why they were in the yard. The Tenant also claimed that it was C.P. who threw garbage in the front yard when he was moving and the photos submitted by the Landlord actually show C.P.'s items, not hers.

Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy.

After consideration of the evidence, testimony and submissions of the parties and on a balance of probabilities, **I find the Tenant's Application should be granted and the Notice should be cancelled.** I find the Landlord has failed to meet the burden of proving this tenancy should end for the reasons cited on the Notice. **I therefore dismiss the Landlord's request for an Order of Possession.**

The Landlord testified that the Tenant has an unreasonable number of occupants. He confirmed he had not been to the rental unit and therefore did not have any first-hand knowledge. The Tenant denies this claim and testified that she lives in the rental unit alone.

The Landlord also raised concerns about an individual sleeping in their car; I accept the Tenant's testimony that this was a one-time occurrence of a guest of her roommate who was intoxicated and unable to drive. I find her explanation that she does not wish to have intoxicants in her home reasonable, having been sober for five years. I accept that this was a one-time occurrence, and note that the Tenant appeared to appreciate that having guests regularly sleep in their cars in residential areas is not preferred.

The Landlord testified that his primary reason for issuing the Notice was the disturbance in late July 2018. Both parties testified as to the events on that date. I note that the Landlord relied on second hand information from the neighbouring tenant and was not able to provide first hand testimony; conversely, the Tenant was able to provide testimony as to the events as well as the circumstances of C.P.'s move from the rental unit. While hearsay is acceptable in hearings before the Residential Tenancy Branch, I prefer the Tenant's first hand testimony over the

Landlord's information regarding the events on that day. I found the Tenant to be honest, forthright and consistent in her testimony.

While it appears the police were called on that day, this does not, in and of itself, indicate such a call was necessary. I find it likely that the disturbance on this date was exacerbated by the neighbouring tenants' relationship with C.P. and her concerns about him being moved from the rental unit.

While it appears as though a stolen trailer was on the rental property, I accept the Tenant's testimony that she was not aware it was stolen, and that she was not at the rental unit when it was brought the property. I therefore find the Landlord has failed to prove that the Tenant engaged in illegal behaviour as alleged in the Notice.

I also accept the Tenant's evidence that the photos of the rental unit submitted in evidence by the Landlord were in fact photos of C.P.'s items on the date he moved out.

As discussed in the hearing, the Tenant has a responsibility to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the Tenant has access pursuant to section 32(2) of the *Residential Tenancy Act*.

Residential Tenancy Branch Policy Guideline 1—Landlord & Tenant Responsibility for Residential Premises further provides in part as follows:

PROPERTY MAINTENANCE

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

The Tenant is reminded that maintenance of the yard and lawn is to a *reasonable* standard, which may be higher than the standard to which she believes a yard should be kept; for instance, a lawn should be regularly mowed, and it is arguably not reasonable to use an inoperable van (irrespective of its sentimental value) for tool storage in the back yard.

The Tenant confirmed during the hearing that she would be willing to take additional steps to maintain the yard should the Landlord wish; the Landlord is therefore encouraged to provide the Tenant with detailed instructions regarding the yard, bearing in mind the requirements of *Policy Guideline 1*, reproduced above.

Conclusion

The Tenants request for an Order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The balance of the relief sought in the Tenants' application is dismissed with leave to reapply.

The Landlord's request for an Order of possession and recovery of the filing fee is dismissed.

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: October 10, 2018

Residential Tenancy Branch