



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This decision pertains to the tenant's application for dispute resolution made on August 20, 2018, under the *Residential Tenancy Act* (the "Act"). The tenant seeks to cancel a One Month Notice to End Tenancy for Cause (the "Notice"), an order for the landlord comply with the Act, regulations, or the tenancy agreement, and a monetary order for recovery of the filing fee.

The tenant, a tenant's interpreter, the landlord, and the landlord's brother (a witness) attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

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's notice to end tenancy complies with the Act.

Issue to be Decided

1. Is the tenant entitled to a cancellation of the Notice?
2. Is the tenant entitled to an order for the landlord to comply with the Act, regulations, or the tenancy agreement?
3. Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord and his witness testified that because the rental unit (a large house) requires to be renovated the landlord's brother (the witness) intend and want to move back into the house. Earlier in the year, in early 2018, the landlord testified that he provided notice to the tenant and her family that he intended for his brother to move in, and they indicated that they would move out and find another place to live. However, as time passed, they decided not to move. (The parties did not submit into evidence a copy of this earlier notice.)

The landlord issued the Notice, dated August 9, 2018, with an (incorrect) end of tenancy date of August 9, 2018, on which is listed eleven grounds for which the tenancy was being ended. In the hearing, the landlord only testified regarding the following issues, which are the grounds on which the Notice was issued, according to the landlord: (1) repeatedly paying rent late, (2) having an unreasonably number of occupants in the house, (3) furniture and cabinet left in the driveway, (4) causing a noise disturbance to the downstairs tenant resulting in her vacating the downstairs rental unit, and (5) issues concerning water leaks.

I note that, while a copy of the Notice was submitted into evidence, the parties did not submit any additional documentary evidence.

The landlord testified that the tenants had 5 people with them at the start of the tenancy, then 7, and then 10. The landlord was fine with 7 people, but not 10, and commented that despite the higher number of occupants, he has never raised the rent.

The landlord testified that the tenants have "never paid the rent on time." Rent is \$2,000.00 a month, though he did not testify as to when rent is due. He stated that the tenant paid rent by cheque the first few months, they then started paying by cash.

He testified that the tenants have left, and have refused to move, various pieces of furniture in the driveway, impeding access to the downstairs tenants.

Regarding the noise issue, the landlord testified that the former tenant complained to him about the tenant and her family making lots of noise until quite late at night, in some cases letting the children run around until as last as 11:00 p.m. This was an issued for the downstairs tenant as she worked at the airport and started work at 4:00 a.m., and was unable to get sleep.

Finally, the landlord testified that the tenant caused water leakage issues and that they failed to take care of required repairs. There were also additional issues with the refrigerator not working.

The tenant testified that they signed a written tenancy agreement but did not have a copy. (The landlord was unable to locate his copy of the agreement.) She went on to state that it is a large house suitable for a large family such as hers. She said that it is a 4-bedroom house, perfectly appropriate for 8 people.

Regarding the rent, she admitted that she pays in cash, and that it sometimes takes a bit of time to pay in cash, and get the money to the landlord, and that this is the reason it is late. She did not dispute the landlord's testimony that she is late paying rent but stated that it has never been an issue before.

She further testified that the current tenants downstairs do not complain about any noise upstairs. The former tenant left, according to her, because of the leaks downstairs, and not because of alleged noise issued.

The parties both testified that about various issues involving the refrigerator, and who was responsible for repairing it.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

There were several grounds listed on the Notice for which the landlord did not provide any testimony or documentary evidence. For example, that the rental unit must be vacated to comply with a government order. There are several grounds checked off on the Notice that were simply not mentioned during the hearing, and I will not address those further.

Regarding the grounds that were testified, the parties provided equally reasonable accounts of events, and neither party provided any additional evidence. But, the onus is

on the landlord to establish the grounds on which the Notice was issued.

The landlord submitted that the tenant was repeatedly late paying rent, but did not provide any documentary evidence to establish when, exactly, rent was late. Nor did the landlord provide a copy of a written tenancy agreement establishing when rent was due. Indeed, the tenant testified that she regularly paid rent in cash a day or two after the first of the month, and that the landlord had accepted these payments.

The landlord submitted that the tenant caused noise that ended up driving out the tenant who lived downstairs. The tenant disputes this, and added that the current tenant did raise any issues. In this case, the landlord did not provide a letter from the former tenant to establish this as the reason.

The landlord submitted that the tenant has left “junk” in the driveway, but did not establish how this might lead to a ground for eviction.

The landlord testified that about various appliance issues and water leakage problems, but did not provide any corroborating, documentary evidence to establish that the tenant somehow failed to do required repairs to any damage apparently cause to the rental unit.

Finally, the landlord did not make any argument as to why 10 people living in the house is unreasonable but why 7 is acceptable. Indeed, a four-bedroom home is reasonably capable of accommodating 10 people. And, in the absence of a written tenancy agreement that might limit the number of occupants, the landlord has the onus of establishing how 10 people, but not 7, is an unreasonable number of occupants.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide sufficient evidence establishing any of the grounds noted in the Notice.

As such, and taking into consideration all of the evidence and testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the grounds on which the Notice was based.

Conclusion

As the tenant did not make any submissions in regard to seeking an order for the landlord to comply with the Act, regulations, or tenancy agreement, I dismiss that aspect of her claim without leave to reapply.

As the tenant is successful in her application, in respect of the Notice, I grant her a monetary award in the amount of \$50.00, in partial satisfaction of recovery of the filing fee. I order that she may retain \$50.00 from her rent for November 2018 in satisfaction of this award.

The landlord's Notice, dated August 9, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 5, 2018

Residential Tenancy Branch