



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FT, MNDCT, OLC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants acknowledged receipt of evidence submitted by the landlord. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

The tenants submitted 38 pages of evidence to the Branch but not to the landlords. The tenants conceded that they failed to serve the landlord their documentary evidence save and except a two page letter dated September 5, 2018 that the landlords counsel invited me to consider. Residential Tenancy Rules of Procedure 3.14 outlines that a respondent must receive the applicants documentary evidence 14 days prior to the hearing date, in this case it was not served at all. Pursuant to Residential Tenancy

Rules of Procedure 3.17 I find that this evidence is inadmissible and has not been considered when making this decision.

Issue(s) to be Decided

Are the tenants entitled to have the One Month Notice to End Tenancy for Cause set aside? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to the recovery of the filing fee from the landlord for this application?

Background and Evidence

Both parties agree that the tenancy began on May 1, 2016 and that the current rent is \$1900.00. Both parties also agree that the tenants have paid the rent for the month of October.

The landlords testified that the tenants were warned about using the balcony for drying clothes or storing articles, their non-compliance with the pool rules, their children being left unattended in the pool areas and causing problems and the tenants' aggressive and often abusive verbal confrontations with other tenants. The landlords testified that the property has 68 other kids and that only the subject tenants' children are a problem. The landlords testified that the biggest issue is the subject tenants' treatment of other tenants. The landlords testified that they issued a One Month Notice to End Tenancy for Cause on August 31, 2018 with an effective date of September 30, 2018 for the following reasons:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlords testified that the pool rules are in place for the safety of all tenants however the tenants left their children unattended and outside of allowable hours. The landlords testified that quiet enjoyment is also a material term of a tenancy for all tenants and that the subject tenants breached in on numerous occasions.

The tenants testified that they have been targeted by the property managers and that there is uneven and unfair treatment towards them. The tenants testified that two of their children have been diagnosed with ADHD and that they are doing their best to control their behaviour. The tenants testified that landlords have not been truthful in this hearing and that they have manipulated and taken advantage of some of the tenants for

this hearing. The tenants testified that their unit is always neat and clean and that rent is always paid on time. The tenants testified that they want to remain and ask that the notice to end tenancy is cancelled.

Analysis

When a landlord issues a notice under section 47 of the Act, they bear the responsibility to provide sufficient evidence to support the issuance of the notice. Counsel for the landlords submits that despite numerous verbal warnings and four written warnings, their behaviour has not improved and continues to have aggressive disrespectful behaviour towards the property managers and other tenants. Counsel submits that the nine letters of complaint from other tenants in the building illustrate the subject tenants' flagrant disregard for the rules of the property and the quiet enjoyment of the other tenants. Counsel submits that as a result of not following simple rules of the property, the tenants thereby affect other tenants' right to enjoy the facilities and to their quiet enjoyment.

Counsel submits that one tenant has already moved out of the building as a result of the subject tenants' behaviour and another has mentioned that they might move if the tenants remain. Counsel submits that the property managers have conducted themselves in accordance with the Act and have used the tools and process under the Act to protect the interest of the tenants in the other 75 units in the building and the interest of the owner. Counsel submits that an order of possession is appropriate and that the tenancy must end.

After considering the testimony of both parties and reviewing the landlords' documentation I am satisfied that the tenants have indeed breached numerous rules of the property. The rules set out by the landlord are reasonable so that all tenants' safety and enjoyment is considered. The tenants' actions clearly illustrate a pattern of noncompliance and one that has adversely affected numerous tenants on the property as evidenced by the nine complaint letters. Quiet enjoyment is a basic and vital term of a tenancy and one that is material. Based on all of the above, the landlord has satisfied me that the tenancy must end.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the notice complies with section 52 of the Act and I therefore grant the landlords an order of possession.

As part of the tenants' application, they have requested a monetary order of \$10,000.00 as compensation for having to deal with this matter and what they allege is "targeting" by the landlord.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenants referred to harassment, fear, threats and racism but have not provided sufficient evidence of such. I find that the landlord exercised their rights under the Act and process available to them and acted in accordance with it. Based on the insufficient evidence before me, I dismiss this portion of the tenants' application.

The tenants' have not been successful in this application.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

The One Month Notice to End Tenancy for Cause dated August 31, 2018 is confirmed; it is of full effect and force. The tenancy is terminated. The landlord is granted an order of possession.

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 19, 2018

Residential Tenancy Branch