



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 7, 2018 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated July 31, 2018 (the “Notice”). The Tenant also applied for an order that the Landlord comply with the *Residential Tenancy Act* (the “Act”), the *Residential Tenancy Regulation* (the “Regulations”) or the tenancy agreement.

Both the Tenant and Landlord appeared at the hearing. The Landlord had Witness 1 and Witness 2 appear at the hearing. The witnesses were outside of the room until required. The hearing process was explained to the parties who did not have questions when asked. The parties and witnesses provided affirmed testimony.

The Tenant had filed an amendment to the Application changing the Landlord’s name and correcting the rental unit address. These amendments are reflected in the style of cause.

I told the Tenant I would not consider the request for an order that the Landlord comply with the *Act*, *Regulations* or the tenancy agreement as this was unrelated to the main issue before me being the dispute of the Notice. Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I dismiss this claim with leave to re-apply. This does not extend any time limits set out in the *Act*.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed he received the hearing package and Tenant’s evidence and raised no issues in this regard.

The Tenant confirmed she received the Landlord’s evidence except two audios submitted. The Landlord said he did not serve the audios on the Tenant because she did not provide him with her email address. I advised the Landlord that email is not a form of service permitted under the *Act* in any event. The Landlord was required to serve the audios on the Tenant in accordance with the *Act* and Rules. I excluded the two audios given the Landlord did not serve them on the Tenant as required by rule 3.15 of the Rules.

Both parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony of the parties and witnesses. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

Part of a written tenancy agreement was submitted as evidence. It is between the Tenant and someone other than the Landlord. The parties agreed the tenancy agreement was between the Tenant and previous owner of the rental unit and that the Landlord purchased the property and became the new landlord.

The Landlord testified that he purchased the property in September of 2017.

The tenancy started June 1, 2006 and is a month-to-month tenancy. The parties agreed rent is \$670.00 per month due on the first day of each month.

The Notice was submitted as evidence. It is addressed to the Tenant and refers to the rental unit. It is signed and dated July 31, 2018 by the Landlord. It has an effective date of August 31, 2018. The grounds for the Notice are 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 and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord testified that he served the Notice on the Tenant by posting it on the door of the rental unit. The Tenant acknowledged receiving the Notice July 31, 2018 posted on the door of the rental unit.

Our records show the Tenant filed the Application August 7, 2018. The Tenant said she believed she filed the Application earlier than August 7th.

The rental unit is in a residence with an upper suite and lower suite. The Landlord submitted letters from the upper suite tenants which document issues and confrontations with the Tenant who lives in the lower suite.

The letters from the upper suite tenants indicate they moved into the residence March 1, 2018. The letters state that the Tenant bullies them, vandalizes their property, swears and screams at them and threatens them. The letters state that the Tenant complains to them and the Landlord

that they make too much noise. The upper suite tenants state that they do not make too much noise and try to keep the noise to a minimum.

The letters refer to an incident where there was an argument or confrontation between the upper suite tenants and the Tenant's daughter who was at the rental unit visiting. The argument or confrontation was over parking. The upper suite tenants state that the Tenant's daughter yelled at them and was physically aggressive.

The letters refer to two incidents where the vehicle belonging to the upper suite tenants was vandalized. The first incident involved a flat tire that the upper suite tenants believed was caused by a corkscrew. The second incident involved a punctured tire due to a screw that the upper suite tenants believe was deliberately put into the tire.

The upper suite tenants submitted a written document from the tire store that fixed the punctured tire. It states that the screw was likely put into the tire given it did not bend and was not damaged which would have occurred if the vehicle had driven over the screw.

The letters refer to an incident where the vehicle belonging to the upper suite tenants was damaged. The upper suite tenants believe the Tenant's daughter caused this damage by hitting the vehicle with the door of her car. The upper suite tenants state that the paint transfer on the vehicle damage matches the color of the Tenant's daughter's vehicle.

Witness 2 is one of the upper suite tenants. He attended the hearing and testified about his interactions with the Tenant. He testified that he was informed of complaints made by the Tenant to the Landlord about noise from the upper suite tenants. He said the upper suite tenants have tried their best to keep the noise to a minimum. He testified about the incidents where his vehicle was damaged. He referred to photos submitted of the screw in the tire as well as the documentation from the tire store. He testified that the Tenant has sworn at him and that there have been three confrontations with the Tenant. He said the Tenant once slammed the door in the face of one of the other upper suite tenants. He testified that the Tenant has been aggressive and that she walks around peering into their windows.

In response to a question by the Tenant, Witness 2 confirmed a police report was filed in relation to the vehicle damage caused by the screw.

Witness 1 is also an upper suite tenant. She testified that there had been multiple incidents of damage to their vehicle and so they put up cameras to see who was causing this. She said no further damage occurred. She said she requires a cane to walk at times and that she has stopped using this around the house because of the noise complaints made by the Tenant. She testified that she works from home and needs to use equipment for work but that she no longer does so because of the noise complaints made by the Tenant. She said the Tenant has come to their door numerous times to tell them to keep the noise down. She referred to an incident

when she was moving a desk and a shelf fell on her. She said the Tenant came up and told her to keep it down or she would complain to the Landlord.

Witness 1 testified about the incident with the Tenant's daughter. She said she asked the daughter to move her vehicle so Witness 2 could park in the driveway. She said the daughter closed the door in her face. She testified that she told the daughter through the door that she did not appreciate the reaction. She said the daughter opened the door and pointed at her and scolded her. She said she was scared by this and went inside. She testified that the daughter then had a confrontation with another of the upper suite tenants and that the daughter lunged at the upper suite tenant. Witness 1 testified about the damage left on the vehicle of the upper suite tenants believed to be caused by the Tenant's daughter.

The Tenant submitted that Witness 1 verbally abused her daughter when she came to the door about the parking spot. Witness 1 denied this.

The Tenant testified as follows. She never threatened Witness 1 about making noise as claimed. The only noise she cares about is noise before 7:00 a.m. as she needs her sleep. She has never threatened the upper suite tenants and has never peered in their windows as claimed. She swore at the upper suite tenants once because they were listening in on a conversation she was having with a friend. She feels that her rights as a tenant have been ignored and that the Landlord is not addressing the issues.

The Tenant denied that she has ever threatened the upper suite tenants or said anything rude to them other than the one time she swore at them. She denied that she damaged the vehicle of the upper suite tenants.

The Landlord testified that he has talked to the Tenant several times over the phone about these issues. He said the Tenant is aggressive when he talks to her.

Analysis

The Landlord was permitted to serve the Notice based on the grounds noted pursuant to section 47(1)(d) of the *Act*. The Tenant had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*.

I accept the testimony of the Tenant that she received the Notice July 31, 2018. Whether the Tenant filed the Application August 7, 2018 or earlier, she did so within the time limit set out in section 47(4) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

I am not satisfied based on the evidence provided that the Landlord has established the grounds for the Notice.

The grounds for the Notice are based on the letters and evidence of the upper suite tenants. The upper suite tenants submitted letters and testified that the Tenant bullies them, vandalizes their property, swears and screams at them and threatens them. The upper suite tenants submitted letters and testified about several confrontations between them and the Tenant. The Tenant denies the allegations of the upper suite tenants.

The upper suite tenants refer to text messages sent to them and the Landlord from the Tenant; however, there are no text messages before me showing the interactions complained of. The upper suite tenants refer to recordings of interactions; however, there are no admissible recordings before me. The upper suite tenants refer to filing a police report; however, no police report was submitted in evidence.

I cannot find that the first instance of damage to the vehicle of the upper suite tenants was caused by the Tenant without further evidence to support this. Nor am I satisfied based on the evidence provided that the Tenant is responsible for the second instance of damage. In relation to the third instance of damage to the door of the vehicle, I also find insufficient evidence to conclude the Tenant's daughter was responsible for this. Further, Witness 1 acknowledged that the damage could have been an accident.

I note that the Tenant has lived in this same rental unit for at least 12 years and for 14 years according to her evidence. The upper suite tenants moved into their suite in March of 2018. The Landlord did not submit that the Tenant has ever caused issues previously nor did he provide any evidence that would suggest the Tenant has caused issues in the past. I acknowledge that the Landlord only purchased the property in September of 2017; however, I would expect the Landlord to look into whether the Tenant has caused ongoing problems in the circumstances.

The only evidence I have before me that the Tenant has caused problems is the letters and testimony of the upper suite tenants. There is insufficient extrinsic evidence to support their claims. I cannot be satisfied in the circumstances that the Tenant is causing the problems alleged.

In the circumstances, I am not satisfied 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 or seriously jeopardized the health or safety or lawful right of another occupant or the landlord. I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the Act.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until 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: September 25, 2018

Residential Tenancy Branch