



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On July 31, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One-Month Notice to End Tenancy for Cause, dated July 20, 2018 (the “Notice”). The matter was set for a participatory hearing via conference call.

The Landlord and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

At the beginning of the hearing, the Tenant clarified that she did not intend to apply for Dispute Resolution regarding an order to provide services. Instead, the Tenant stated that she forwarded an amendment to dispute the Notice. Although the Landlord stated that she didn’t receive an amendment, she did acknowledge that the Notice had been served and that she was prepared to speak to the Tenant’s Application to cancel the Notice. In accordance with Section 64(3) of the Act, I have amended the Tenant’s Application by removing her claim for an order to provide services and noted that the Tenant is only applying to cancel the Notice.

Issue to be Decided

Should the Notice be canceled, pursuant to Section 47 of the Act?

Background and Evidence

The Landlord and the Tenant agreed on the following terms of the tenancy:

The 1-year, fixed term tenancy began on May 1, 2017 and continued on as a month-to-month tenancy after April 30, 2018. The monthly rent of \$700.00 is due on the first of each month. The Landlord collected a security deposit of \$350.00 and a pet damage deposit of \$100.00.

Landlord's Evidence:

The Landlord testified that the Tenant has been affecting the quiet enjoyment of other residents and breaching a material term of her Tenancy Agreement.

One of the issues with the Tenant had to do with a large, "umbrella-style" clothesline that she placed in her yard. The clothesline interfered with the Tenant's neighbour's access to their shed and the Landlord had to send a letter, dated July 13, 2018, to the Tenant that stated; that the umbrella has been repositioned; that if there are any other issues with the clothesline that it would have to be removed; and, to warn the Tenant not to disrupt the quiet enjoyment of the other tenants or a one-month notice to vacate would be issued. The Landlord referred to an addendum, initialed by the Tenant, attached to the Tenancy Agreement where clause #10 stated; "Thirty days written notice will result if the conduct of the Tenant...is such that the enjoyment of other residents in the building or neighbourhood is unreasonably disturbed." The Landlord advised that the umbrella clothesline was taken down on September 18, 2018.

The Landlord stated that on July 19, 2018, the Tenant was suspected of throwing eggs from her residential property, over the fence and onto a stranger's car that was parked in the Tenant's parking space. The stranger, while looking for the culprit, kicked open a gate of the Tenant's neighbours and caused some damage. The police attended and spoke to the stranger and the Tenant's neighbour about the incident. The Landlord said that the police spoke to the Tenant about the incident later that evening. The stranger agreed to pay for the damage and there were no criminal charges. The Landlord is in the process of obtaining the police file number. The Landlord acknowledged that no one saw the Tenant throw any eggs over the fence.

As a result of the two incidents (umbrella clothesline and egg throwing) the Landlord personally served a One-Month Notice to End Tenancy for Cause to the Tenant on July 20, 2018. The Notice had a move-out date of August 31, 2018. The Landlord checked off two reasons for the Notice on page 2 as follows:

1. The Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord is requesting an Order of Possession as the Tenant is still occupying the rental unit.

Tenant's Evidence:

The Tenant testified that she put up the umbrella clothesline in September of 2017 and that there have been no problems until her neighbour put a shed on their property in July 2018 and although the clothesline infringed on their access, the neighbour stated that they will rarely go into the shed, so it shouldn't be a problem. The Tenant stated that she did not know who has the problem with the clothesline, other than the Landlord. The Tenant stated that she doesn't have a dryer, nor is there the proper electrical for her to install a dryer; therefore, she likes to have the option to hang her clothes to dry.

The Tenant stated that she was in Vancouver at several doctor's appointments during the egg throwing incident and did not return home until July 20, 2018, when she received the Notice from the Landlord.

The Tenant would like to continue her tenancy and does not believe that the reasons for the Notice are valid.

Analysis

The Landlord has served the Notice on the Tenant based on Sections 47(1)(e) and 47(1)(h) of the Act. When I consider the validity of the reasons the Landlord has for ending the tenancy, I must determine if the Landlord has sufficient evidence to prove that the Tenant's actions adversely affected the quiet enjoyment, security, safety, or physical wellbeing of another occupant of the residential property and if those actions were illegal and if the Tenant failed to comply with a material term and has not

corrected the situation within reasonable time after the Landlord gives written notice to do so. The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the Notice are valid and that the Notice complies with Section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act.

The Landlord referred to clause #10 in the Tenancy Agreement (Addendum) where the Tenant may receive a 30-day written notice if they unreasonably disturb the enjoyment of other residents in the neighbourhood. The Landlord stated that the letter she wrote to the Tenant, dated July 13, 2018, warned the Tenant not to disturb the quiet enjoyment of other tenants. The Landlord said the Tenant disturbed the quiet enjoyment of the other neighbours by yelling at them when arguing over the clothesline. When considering the testimony and evidence, I find firstly; that the clause is overly subjective and secondly; that it is not a material term that would justify the end of a tenancy. Furthermore, I find that the Landlord failed to provide sufficient evidence that the Tenant did disturb the quiet enjoyment of another neighbour or breached Section 47(1)(h) of the Act.

The Landlord testified that the Tenant may have been involved in a mischief that involved the throwing of an egg at a car and resulted in some damage to a gate on the residential property on July 19, 2018. The Tenant stated she was not involved and not present at the time. The Landlord stated that compensation for the damage was made by the stranger responsible; however, that the Tenant may have been responsible for affecting the quiet enjoyment of one of her neighbours as a result of instigating the incident. Based on the Landlord's testimony that the Tenant "may" have been involved in illegal activity; that the Tenant testified that she was not present during the incident; and, that no one saw the Tenant throw an egg, I find that the Landlord has failed to provide sufficient evidence that the Tenant breached Section 47(1)(e) of the Act.

As a result of the above testimony, evidence and findings, I further find that the reasons for the issuance of the Notice are invalid. Therefore, I cancel the Notice and order that the tenancy continue until it is ended in accordance with the Act.

As this tenancy will continue, I encourage both the Landlord and the Tenant to communicate with each other in a respectful manner and to do so in writing.

Conclusion

The One-Month Notice to End Tenancy for Cause, dated July 20, 2018, is canceled and the tenancy shall continue until it is ended in accordance with the *Residential Tenancy 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 *Residential Tenancy Act*.

Dated: September 20, 2018

Residential Tenancy Branch