



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SELKIRK HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent N.P. attended on behalf of the corporate landlord. The landlord's agent called on witness V.M., who is the occupant of the rental unit below the tenants' rental unit, to provide testimony during the hearing.

As both parties were present, service of documents was confirmed. The tenants testified that they served the landlord with the Notice of Dispute Resolution Proceeding package for this hearing by Canada Post registered mail on August 2, 2018, which was confirmed by the landlord's agent. The landlord's agent confirmed that the landlord did not serve any evidence on the tenant. Based on the undisputed testimonies of the parties, I find that the landlord was served in accordance with section 89 of the *Act*.

The tenants testified that they also served their evidence to the landlord with the Notice of Dispute Resolution Proceeding package, however the landlord's agent disputed receiving any evidence in that package. Given that the only evidence submitted by the tenants not already in the possession of the landlord was the tenant S.E.'s doctor's note, I allowed tenant S.E. to provide only verbal testimony about the doctor's note and I have not considered the documentary evidence in this decision.

The landlord's agent testified that the only evidence he provided to the tenants, by leaving it in their mailbox, was a copy of their tenancy agreement. The tenants disputed this and claimed that they never received it as their mailbox is broken. The landlord's agent uploaded into documentary evidence a complaint letter he stated that he received. However, the landlord's agent acknowledged that he did not serve the tenants with the complaint letter, therefore I advised the landlord's agent that I would not consider the documentary evidence but that he could provide verbal testimony about the complaint.

Preliminary Issue – Amendment of Tenants' Application

The tenants' application named the landlord's agent as the respondent, however, the Notice of Rent Increased dated July 26, 2018 submitted into documentary evidence by the tenants only provides the name of the corporate landlord. The tenancy agreement, submitted into evidence by the landlord's agent provides both the name of the landlord's agent and the corporate landlord.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the tenants' application to include the name of the corporate landlord as the respondent in addition to the landlord's agent.

Preliminary Issue – Unrelated Claims

The tenants' application included a claim requesting an order for the landlord to comply with the Act, regulations and/or tenancy agreement. The only description provided by the tenants regarding this claim was "I want the landlord to be fair."

Section 59(2)(c) of the Act requires that an application for dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Further to this, Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenants' additional claim does not provide sufficient particulars of the issue seeking to be addressed and therefore I cannot determine that it is related to the

tenants' application to cancel the One Month Notice. Therefore, the tenants' additional claim requesting an order for the landlord to comply be being "fair" is dismissed.

Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. The parties confirmed the following terms of the tenancy agreement:

- This tenancy began on November 1, 2017 as a three-month fixed term tenancy with an end date of January 31, 2018. After that date, the tenancy converted to a month-to-month tenancy.
- Monthly rent of \$900.00 is payable on the first of the month.
- The tenants paid a security deposit of \$450.00 at the beginning of the tenancy, which continues to be held by the landlord.

The tenants' rental unit is a studio apartment located on the second floor of an apartment building.

The tenants confirmed that the landlord served them with the One Month Notice dated July 21, 2018 by posting it on their door. The tenants testified that they received the notice on July 23, 2018.

The tenants testified that they had never received any prior written warnings from the landlord about any concerns related to noise complaints or illegal activity.

The tenants submitted a copy of the landlord's One Month Notice into evidence, which states an effective move-out date of August 31, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

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.*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

I note that the landlord has not provided any of the particulars or details regarding these reasons to end tenancy in the "Details of Cause" section provided on the form. I confirmed with the landlord's agent that no separate sheet setting out the details regarding the reasons for the ending the tenancy was ever prepared or given to the tenants.

I also note that the only evidence submitted by the landlord in this matter was a copy of the tenancy agreement and a letter which the landlord's agent stated was a complaint letter, which the landlord's agent did not serve on the tenants, and which is therefore not being considered as evidence in this matter.

I have addressed the reasons for ending the tenancy for cause under separate sub-categories.

Significant Interference and Unreasonable Disturbance

The landlord called witness V.M., who is the occupant of the rental unit located below the tenants' rental unit, to provide testimony regarding his loss of quiet enjoyment due to disturbance caused by the tenants during the night.

Witness V.M. testified that he moved into the rental unit in February 2018. He stated that approximately four to five nights a week, he is awakened during the night between the hours of midnight and 3:00 a.m. due to noise generated by the tenants above him. He stated that the noise is a result of the tenants running a shower, washing dishes, and having guests knock on the door. He stated that the noise can last about an hour. Witness V.M. testified that one night, at 2:00 a.m. it sounded like the tenants were hitting on the floor with a hammer. Witness V.M. stated that he wakes up early to go to work and that the noise disturbance is negatively impacting his ability to get sleep.

Witness V.M. testified that he was travelling out of the country for the months of June, July and August, having returned on September 3, 2018 to find that the issue has escalated in the past couple of weeks.

The landlord's agent testified that the building is 45 years old and that just before the tenants moved in, the carpeting was removed and replaced with laminate flooring.

The landlord's agent stated that the previous occupant of the rental unit prior to witness V.M. was a woman who was partially deaf. The agent testified that this occupant complained to him a few times about the noise from the tenants' rental unit above.

Tenant S.E. testified that she suffers from sleep-walking and often wakes up and walks around the rental unit during the night. The tenants acknowledged that they occasionally go out for walks at night and that may cause some noise with the door opening and closing.

The tenants testified that they had offered to purchase a rug to try to mitigate the noise transference between their unit and the unit below. Witness V.M. confirmed having this conversation with the tenants and further stated that he told the tenants not to spend their own money on this.

During the hearing, the tenants and witness V.M. came to an agreement to resolve their issues by switching rental units, so that witness V.M. would reside in the tenants' rental unit which is currently directly above him, and the tenants would move into witness V.M.'s unit on the ground floor. Although the tenants and witness V.M. were in

agreement on this solution, the landlord's agent stated that he did not know how he would effect this solution, and also stated that this would not resolve his other complaint regarding alleged illegal activity by the tenants.

Illegal Activity

The landlord's agent provided testimony that the entrance door to the apartment building was sometimes propped open and that he believed the tenants were responsible for this. The landlord's agent also stated that he saw the tenants outside of the apartment building with a group of five to six males, coming and going from the building. The landlord's agent believed that the tenants were engaging in prostitution.

The tenants denied the allegations made by the landlord's agent.

I asked the landlord's agent if he had contacted the police regarding his allegation of illegal activity by the tenants, given that he had selected this as one of the reasons for ending the tenancy. The landlord's agent stated that he had not reported this to the police, nor did the landlord's agent submit any evidence in support of his allegations.

The tenants stated that the landlord's agent "doesn't like" them and has been trying to get them to move out.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenants acknowledged finding the landlord's One Month Notice posted on their door on July 23, 2018.

The tenants filed an application to dispute the notice on August 2, 2018, which is within ten days of receipt of the notice. Therefore, I find that the tenants have applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

The approved form for a one month notice to end tenancy for cause includes a section entitled "Details of Cause" and indicates that the notice may be cancelled if details are not described. The landlord issuing the One Month Notice is required to provide the details pertaining to the reasons for ending the tenancy, to ensure that the tenant is clearly aware of the case being made against them, so that the tenant has a full and fair opportunity to prepare their evidence in order to dispute those claims, should they wish to.

In this matter, the landlord failed to provide any particulars regarding the "details of cause" for issuing the notice, on or attached to the notice.

Further to this, the landlord failed to provide any documentary evidence to the tenants in advance of the hearing in relation to the reasons provided on the notice for ending the tenancy. Therefore, I find that the tenants had no ability to prepare in advance to defend against the allegations of illegal activity cited in the One Month Notice, and I find that this has unfairly prejudiced the tenants in their ability to respond to the notice. The landlord did not provide the tenants with any details or evidence regarding the reasons for ending the tenancy until providing verbal testimony at the hearing.

In relation to the landlord's claim that the tenants significantly disturbed another occupant, no evidence was presented during the hearing, only verbal testimony of the landlord's agent and the landlord's witness V.M. During the hearing, the tenants and witness V.M. came to an agreed upon solution to settle the noise transference issue between the rental units. As such, I find that the grounds for ending the tenancy based on significant disturbance of another occupant are no longer valid.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord failed to provide the required details of cause on the One Month Notice, and I find that the landlord failed to provide sufficient evidence to prove that the tenants are involved in illegal activity. In addition, I find that the grounds for ending the tenancy based on significant disturbance of another occupant are no longer valid as the tenants and the complainant came to a mutually agreed upon solution during the hearing.

As such, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenants were successful in their application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated July 21, 2018 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

I find that the tenants' claim for an order for the landlord to comply with the *Act* is an unrelated claim on the application and 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: September 26, 2018

Residential Tenancy Branch