



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the Tenants: CNC
 For the Landlord: OPC, FFL

Introduction

This decision is in respect of the tenants' and landlord's applications for dispute resolution under the *Residential Tenancy Act* (the "Act") made on November 7 and November 8, 2018, respectively.

The tenants seek an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47(4) of the Act.

The landlord seeks an order of possession related to the Notice, pursuant to sections 47 and 55 of the Act, and a monetary order for recovery of the filing fee, pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened, and the landlord and a tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issue(s) of this application are considered in my decision.

Issues to be Decided

1. Are the tenants entitled to an order cancelling the Notice?
2. If they are not, is the landlord entitled to an order of possession?
3. And, is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

By way of background, the landlord testified that the tenancy commenced on June 1, 2017 and rent was initially \$1,000.00 (now somewhat higher; the landlord was not able to confirm the exact amount). The tenants paid a security deposit of \$500.00 and a pet damage deposit of \$100.00.

The landlord testified that the tenant has been a “constant problem” and that he does not abide by the rules of the building. The building in which the rental unit is located is a designated crime free building. The tenant has been bringing in undesirable people, including prostitutes. There have been “numerous” verbal and written complaints from other occupants of the building in regard to the tenant. (I note that, while the applications and the Notice refer to two tenants, the crux of the landlord’s issues appear to be focussed on the male tenant.)

The landlord testified that there is constant, unreasonable traffic—likely drug trafficking activity—in and out of the building due to the tenants’ activities, and that the traffic is noisy and loud. The prostitutes referred to have been banned from the building, and the police have been called. In addition, one of the tenants’ guests pulled a fire alarm near the rental unit late at night on October 24, 2018. The landlord also referred to the tenant’s non-compliance with bed bug treatment protocols. In his final submissions, the landlord argued that the written documentary evidence submitted “speaks for itself.”

Documentary evidence submitted by the landlord includes a handwritten letter (dated November 9, 2018) of a next-door neighbour of the tenants. The letter alleges that the tenant is a drug addict and that there is activity related to this drug use.

A breach letter dated May 9, 2018, from the landlord to the tenants advising them that they were “allowing banned person from [the apartment building] to your suite” and that this the landlord’s final warning on the matter. There is a second breach letter dated June 4, 2018, where the landlord informs the tenants that they again breached their contract (on that same date) by permitting people that are banned from the building onto the property. There is also a breach letter dated September 5, 2018, in which the landlord advises the tenant that they breached their contract on September 1, 2018, by permitting “prostitute twins” onto the premises, and that the prostitute twins are banned from the building.

The Notice, a copy of which was submitted into evidence, was served by the landlord in-person on the tenant on October 29, 2018, and noted an effective end of tenancy date of November 30, 2018.

The grounds on which the Notice was issued were checked off on page 2 of the Notice, and were the following: (1) the tenant or a person permitted on the property by the tenant (a) significantly interfered with or unreasonably disturbed another occupant or the landlord, (b) seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and (c) put the landlord's property at significant risk; (2) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to (a) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, (b) jeopardize a lawful right or interest of another occupant or the landlord; and, (3) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant had very little to say during his testimony, but referred me to a hand written letter—his written submission, in effect—submitted a few days before the hearing. In the letter, the tenant submits that the complaint letters (submitted into evidence by the landlord) were written by friends of the landlord, and that the tenant has “never heard any complaint from the landlord.” He said that he gets along with everyone in the building. He goes on to state that “there is no Court order, documentation or proof to have any of my friends or guests banned From the building. These guests and myself do not appreciate being called prostitutes.”

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.

In this case, the landlord testified about the tenant being a constant problem. The documentary evidence to support this claim are three letters written by the tenant's neighbours. One of the letters refers to the tenant being a drug addict, that there is traffic coming and going, and that this has been a problem since the tenant moved in. The other letter was dated October 26, 2018, and spoke of the tenant causing some

disturbances at 2:00 A.M. Another letter from July 18, 2018, is from a neighbour who states that the tenant let in a rather noisy guest into his rental unit at about 3:00 A.M., causing a disturbance to the neighbour. While the landlord submits that the problem is constant, there are only a few instances where the tenant could be said to adversely affect the quiet enjoyment of another occupant. The landlord tendered no evidence to demonstrate how the supposed increased traffic gives rise to a ground under which he issued the Notice.

Regarding the specific ground of breaching a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, the landlord submitted into evidence a total of three breach letters in which the tenants are held to be in violation of a breach of a rule. I note that there is no additional documentation submitted by the landlord that includes, in writing, the names of the banned individuals. Nor is there a copy of a written tenancy agreement in which there might be a reference to the prohibition of landlord-designated individuals. The tenant's written submission states that there is no documentation or proof that any of the third parties mentioned are in fact banned from the building.

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 any additional evidence that the unnamed third parties (whether or not those parties include the "prostitute twins," who are named) are, in fact, banned from the building. There is, as pointed out by the tenant, no documentary evidence to which I was referred that would establish this. While the parties may have some common understanding as to who these people might be, in order for me to make a finding in law that the tenant breached a material term of the tenancy agreement, I have to be satisfied that the rule that bans certain people from the building exists.

The tenant did not dispute that there exists such a rule, but in arguing that there is no documentation banning anyone from the building, then the onus falls on the landlord to establish on a balance of probabilities that (A) such a written rule exists—and to provide a copy of that rule into evidence, (B) that the rule is a material term of the tenancy agreement—and to provide a copy of the tenancy agreement or an addendum to the tenancy agreement showing this to be the case, and (C) the tenants agreed to the material term at the commencement of the tenancy agreement.

Taking into consideration all the oral testimony and documentary evidence 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 establishing any of the grounds on which the Notice was issued. As such, I dismiss the landlord's application without leave to reapply.

I further dismiss the landlord's application for a monetary order for recovery of the filing fee.

I hereby cancel the Notice, issued October 29, 2018, which is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

That having been said, the tenants are now made aware of the substance and nature of the noise complaints by their fellow neighbours, and should there be additional and documented complaints of a similar nature, that the landlord may have grounds for issuing a further notice to end tenancy for cause. The tenants would be well advised to work, as reasonably as possible, with the landlord in ensuring noise and foot traffic disturbances are kept to an absolute minimum.

Conclusion

I hereby dismiss the landlord's application without leave to reapply.

I hereby cancel the Notice, issued October 29, 2018, which is of no force or effect. The 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: December 17, 2018

Residential Tenancy Branch