



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT FFT OLC CNR CNC

Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

ST translated for, and testified on behalf of the landlords in this hearing. 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 landlords confirmed receipt of the tenant's applications for dispute resolution ('applications'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenants' applications. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

The tenant confirmed receipt of the 1 Month Notice dated October 31, 2018. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

The tenant also confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 15, 2018. Both parties confirmed that the tenant paid the outstanding rent within 5 days of receiving the 10 Day Notice as allowed by section 46(4) of the *Act*, in which case the Notice has no effect. Accordingly, the tenant's application to cancel the 10 Day Notice is cancelled as the 10 Day Notice dated November 15, 2018 no longer has any effect.

Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled?

If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled an order to allow access to the garage?

Is the tenant entitled to recover the filing fee for his application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 7, 2018, with monthly rent currently set at \$650.00, which is payable on the first day of each month. There is no written tenancy agreement for this tenancy. The tenant rents one of the 8 rooms in the home owned by the landlords. The home is a 3 floor house, with a shared kitchen and laundry. The tenant lives on the main floor, while several other tenants reside on the top floor and basement level.

The tenant referenced a previous decision dated October 25, 2018 for a hearing held on the same date to deal with the tenant's application to cancel a 1 Month Notice issued to the tenant. The reasons provided on that notice were:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- b) The tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The Arbitrator cancelled the 1 Month Notice as the Arbitrator found that the landlord did not have grounds to end the tenancy on the grounds provided.

The Arbitrator also made two orders as set out below:

"I find the tenant has the right to peaceful enjoyment of his unit pursuant to section 28 of the Act and this would encompass the right to practice his music at reasonable levels between the hours of 11 a.m. and 9:30 p.m."

"I find section 29 of the Act restricts a landlord from entering a tenant's unit unless the tenant gives permission or the landlord provides at least 24 hour written notice of the entry and purpose and the entry is for a reasonable purpose."

The landlords confirmed in the hearing that the tenant was issued a new 1 Month Notice on October 31, 2018 for the same reasons as the previous 1 Month Notice. A copy of this 1 Month Notice was not provided for the hearing, but both parties confirmed the receipt of this 1 Month Notice and the grounds provided for the issuance of it.

The landlords testified that they continued to receive complaints from the occupants and tenants in the house about the tenant regarding noise, specifically the tenant's music playing and singing. Although it was undisputed that the tenant abided by the previous order to practice his music within the hours of 11:00 a.m. and 9:30 p.m., the main issue was with the level of disturbance the tenant's music caused the other tenants in the home.

The landlords called 5 witnesses, who attended this hearing to give their personal testimony about the tenant. Two of the tenants reside on the same floor as the tenant and testified that the tenant would turn up the volume of his music to the extent that the walls would shake. The landlords testified that the issue was not only with the loud music, but with the tenant's reaction when the other tenants or the landlords attempted to discuss the issue with the tenant. The landlords testified that they feared for their safety and felt threatened by the tenant's reaction when they would attempt to address the issue of the noise, which involved the raising of the tenant's voice.

One of the witnesses testified that he could not hear the tenant's music as he resided on the basement level, but that approximately 4 months ago the tenant exhibited strange behaviour by sitting outside his window. Another tenant testified that he was not only disturbed by the tenant's loud music, but also the fact that he placed his garbage near his food.

Another witness testified that the tenant was the "worst awful musician in the world". Another witness expressed his concern about the smell the tenant emitted from his room.

The tenant responded that the main reason behind the complaints was not his music as much as the dysfunctional relationship between himself and the other tenants. The tenant expressed concern over the lack of community and tolerance from the other tenants, and that the 1 Month Notice should be cancelled as he played his music within the allowable times as set by the previous Arbitrator. The tenant testified that he should not be evicted due to a difference in musical tastes and a general intolerance towards him as an individual. The tenant admitted to sitting outside the other tenant's window on one occasion as he was listening to music. The tenant also admitted to having an interest in composting, and had several compost containers in the home.

The tenant testified that he tried to express his willingness to remedy the situation and improve his relationship with the landlords and other tenants by ending his music playing earlier than the times ordered by the Arbitrator. The tenant felt that the issues were caused more by a personality clash than the alleged disturbance that he was causing others.

The tenant also requested the reinstatement of his use of the garage, which both parties confirmed was previously allowed by the landlords.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. The landlord served the tenant with the 1 Month Notice on October 31, 2018 by posting the notice on the tenant's door. In accordance with section 90 of the *Act*, the tenant is deemed served with the notice on November 3, 2018, three days after posting. The tenant filed for dispute resolution on November 13, 2018. Therefore, the tenant is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

Section 47 of the Act, in part, states as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or the landlord.

I find that none of the testimony provided, nor the evidentiary materials submitted, sufficiently support any allegations of illegal activity by the tenant. On this basis, I find that the landlords do not have grounds to end this tenancy on the basis of illegal activity.

While the landlords provided in evidence testimony from other tenants that expressed concern about the tenant's music, the nature of several of the complaints raises concern about the motivations behind the statements, including references to the tenant's ability to play his music and his smell. I have also considered the testimony that the tenant was threatening in nature, but I find that the landlords did not provide sufficient evidence to support any threats that the tenant made. I find that due to cultural and language differences, the tenant's behaviour could be interpreted as threatening, and taking in consideration that the landlords referenced their difficulty in understanding the tenant when communicating with him, I am not satisfied that the tenant had engaged in threatening behaviour to the extent that the grounds provided on the 1 Month Notice were supported.

As this is a multi-tenanted building, with many occupants, I find that the level of quiet enjoyment is significantly reduced to the communal nature of the living space and construction of the home. I find that the landlords have not provided sufficient evidence to support that the tenant has failed to abide by the previous order of the Arbitrator, and that although the tenant's behaviour is disturbing to the landlords and other occupants, the level of disturbance is not serious or significant enough for me to find that the landlord has justified the end of this tenancy on the grounds provided on the 1 Month Notice.

Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*.

I find that it was undisputed by both parties that the tenant had access to the garage to store his belongings, and the access was denied without notice or permission of the tenant. I find it was also undisputed that the tenant still has belongings in the garage, which he no longer has access to.

Section 31 of the *Act* states as follows:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

- (a) the tenant agrees to the change, and
- (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

By refusing and preventing access to the garage, I find the landlords failed to comply with section 31 of the *Act*. I order that the landlords restore the tenant's access to the garage and his belongings. If the landlords fail to comply with this Order and the *Act*, the tenant may be entitled to a monetary order under sections 65(1)(c) and (f) of the *Act* if an Arbitrator determines that there has been "a reduction in the value of a tenancy agreement."

Conclusion

The landlord's 10 Day Notice dated November 15, 2018 is of no force or effect as the tenant paid the outstanding rent as allowed under the Act.

The landlord's 1 Month Notice dated October 31, 2018 is cancelled and of no continuing force or effect. This tenancy is to continue until ended in accordance with the *Act*.

I order that the landlords restore the tenant's access to the garage and his belongings.

I find that the tenant is entitled to recover the filing fee for this application. I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 20, 2018

Residential Tenancy Branch