



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord:** OPC, FFL
 Tenant: CNC

Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* (“*Act*”).

The landlord sought:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The tenant sought:

- cancellation of the One Month Notice pursuant to section 47 of the *Act*.

The landlord’s building manager, the landlord’s general manager and the tenants 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 landlord’s general manager (the landlord) stated that they would be the primary speaker for the landlord and Tenant V.M. (the tenant) stated that they would be the primary speaker for the tenants.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord testified that they served the tenants with the Landlord’s Application for Dispute Resolution (Landlord’s Application) and evidence by way of registered mail on December 14, 2018. The tenant confirmed that they received the Landlord’s Application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the Landlord’s Application and evidence.

The landlord testified that they served the tenant with a second evidentiary package on January 10, 2019.

The tenant testified that they personally served the Tenants' Application for Dispute Resolution (Tenant's Application) to the landlord on December 05, 2018, and their evidence to the landlord on January 02, 2019. The landlord confirmed that they received the Tenants' Application and evidence. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the Tenants' Application and evidence.

Rule 3.3 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence intended to be relied on at the hearing for a cross application must be received by the other party not less than 14 days before the hearing. I find that the landlord did not serve the tenants with their second evidence package in accordance with the Rules of Procedure and that the tenants may be prejudiced by this as they did not have an adequate chance to respond to the landlord's evidence. I further find that this evidence is regarding an incident that happened after the One Month Notice was issued to the tenant and is not the basis for notice to end tenancy served to the tenants. For the above reasons the landlord's second evidence package served on January 10, 2019, is not accepted for consideration.

The tenant acknowledged receiving the One Month Notice on November 29, 2018. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the One Month Notice on November 29, 2018.

Issue(s) to be Decided

Should the One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided written evidence which shows this tenancy commenced on May 01, 2016, with a current monthly rent of \$1,266.00, due on the first day of each month. The tenancy agreement indicates a security deposit in the amount of \$587.50 which the landlord currently retains.

A copy of the landlord's November 29, 2018, One Month Notice was entered into evidence by the both parties. In the One Month Notice, requiring the tenant to end this

tenancy by December 31, 2018, the landlord cited the following reasons for the issuance of the One Month Notice:

Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Tenant or a person permitted on the property by 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 of the residential property.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

There is nothing written in the Details of Cause section of the One Month Notice. The Details of Cause section indicates that the notice may be cancelled by the Residential Tenancy Branch if the details are not described.

The landlord submitted into evidence:

- A copy of a letter from Occupant A, who also resides in the building, dated August 16, 2018, in which the occupant states that Tenant V.M. has yelled obscenities at the occupant regarding their role in having other occupants evicted and threatened the occupant's dogs on two occasions. Occupant A indicates that the tenants then harassed the occupant on a third occasion, daring the occupant to complain about them to management;
- A copy of a warning letter to the tenant dated October 19, 2018, regarding the tenants directing obscenities at the Occupant A and advising the tenants that if they do not correct this action they will receive a one month eviction notice; and
- A copy of a letter dated November 24, 2018, in which Occupant A states that they have suffered ongoing harassment from the tenants including verbal threats and the tenant charging at high speeds towards Occupant A with the most recent incident occurring a week before the date of the letter. The letter also states that their gate is vandalized and that she believes it is related to the harassment from the tenants.

The tenant submitted into evidence:

- A copy of a written response from the tenants which indicate that it is not the tenants who had directed obscenities at Occupant A during one occasion but a different occupant who was standing near them. The response goes on to state

that they have asked for specific dates from the landlord about the incidents that have occurred but that the landlord has not provided any. The tenants indicate that Occupant A is actually harassing them and trying to have the tenants evicted. The tenants indicate that they have their scooter set to lower speeds in the common area of the building and that the tenant had to go on to the grass to avoid Occupant's A's dogs when passing them at one point but that it was not done at a high speed or directed at the dogs. The tenant states that they love dogs and would not threaten animals. The tenant denies vandalizing the gate and harassing Occupant A while maintaining that they try to avoid Occupant A so that they do not have any incidents.

The landlord stated that they have had many verbal complaints about the tenants' harassment of Occupant A. The landlord submitted that the first written complaint was received in August 2018 and the second written complaint was received by the landlord on November 24, 2018. The landlord stated that Occupant A is disabled which has made her particularly vulnerable to the tenants' harassment.

The landlord submitted that the tenants were not happy with a previous occupant being evicted, which Occupant A was involved in as a witness at the hearing, and that it is for this reason that the tenants have been victimizing Occupant A. The landlord stated that Tenant V.M. drives her scooter very fast at Occupant A which has made Occupant A fear for the safety of her dogs. The landlord stated that they have been trying to have the tenants comply with the rules of the building regarding interactions with other occupants but that they have not been successful as the negative behaviour from the tenants has continued. The landlord stated that their own interactions with the tenants have also been contentious as the tenants have been aggressive in nature during suite inspections. The landlord referred to another witness statement about an incident that happened in January 2019 regarding the tenant being heard in an aggressive manner towards Occupant A.

The tenant denied that they have been aggressive towards Occupant A. The tenant submitted that it is actually they who are being harassed by Occupant A as her dogs are aggressive with the tenants. The tenant stated that they have attempted to leave their rental unit at certain times and that Occupant A has been on the path blocking their progress which they felt was for the purpose of having a negative interaction. The tenant submitted that the incident in question regarding the scooter being driven past Occupant A was simply the tenant trying to get past Occupant A when they were blocking the path and did not get her dogs out of the way. The tenant testified that she just went around Occupant A and her dogs by going on the grass. The tenant stated

that there is only one way for them to leave and enter their unit which is the same path that Occupant A uses as well. The tenant referred to a previous hearing for a notice to end tenancy given from the landlord for a different cause and that they felt harassed by the landlord.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. This section 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.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenants disputed this notice on December 03, 2018, and since I have found that the One Month Notice was served to the tenants on November 29, 2018, I find that the tenants have applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) **give the address of the rental unit,***
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy*
- (e) when given by a landlord, be in the approved form.*

I find that the One Month Notice does not have any specific grounds for ending the tenancy written in the Details of Cause section of the notice. For this reason I find that the One Month Notice dated November 29, 2018, does not comply with the provisions of section 52(d) of the *Act* and is not a valid notice to end tenancy. For this reason the One Month Notice dated November 29, 2018, is set aside and this tenancy will continue until ended in accordance with the *Act*.

I note that in a previous decision between the parties with a different arbitrator in September 2018, it was specifically mentioned that failing to disclose the grounds for ending the tenancy on the One Month Notice in the Details of Cause section is grounds to set the notice aside as it is contrary to the principles of natural justice.

As the landlord has not been successful in their application, I dismiss the landlord's request for the filing fee, without leave to reapply.

Conclusion

The tenants are successful in their Application.

The One Month Notice dated November 29, 2018, is cancelled and of no force or effect.

This 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 *Residential Tenancy Act*.

Dated: January 22, 2019

Residential Tenancy Branch