



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC LRE FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

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 tenant GH primarily spoke on behalf of the co-tenants (the "tenant").

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the 1 Month Notice on November 20, 2018 and landlord's evidence. The landlord confirmed receipt of the tenant's application for dispute resolution dated November 28, 2018. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Should the landlord's right to enter the rental suite be suspended or restricted?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The parties agreed on the following facts. This tenancy began in May 2018. The monthly rent is \$850.00 payable on the first of each month. The rental suite is the basement suite of a two level detached home. Another resident occupies the upper level and the landlord resides at a different address.

The landlord issued a 1 Month Notice on November 20, 2018 detailing the following reasons for this tenancy to end:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

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 or the landlord;*

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 testified that the tenant smokes in the rental unit causing disturbance for the upstairs resident. The landlord said that the smoking is a breach of a material term of the tenancy agreement. The landlord testified that they gave verbal warnings to the tenant.

The landlord testified that the tenants sublet the suite by allowing an additional occupant to reside with them for a time. The landlord said that the tenants have a number of guests come to their suite and they believe that the tenants are operated a commercial

business. The landlord said that the number of visitors and the fact that many of them smoke cause disturbance to the other residents.

The landlord also testified that the tenants have failed to pay the full rent owing and the tenancy is in arrears.

The landlord's witness testified that the smoke is a health risk and that they are concerned that the number of visitors who smoke may be a fire hazard. The witness described the activities as an "absolute nuisance".

The tenants testified that they do not smoke inside the rental unit but instead smoke outside in accordance with the tenancy agreement. The tenants also said that they direct guests to smoke outside of the suite. While the tenants acknowledge that guests attend the rental suite they dispute that they are operating a commercial business.

The tenants testified of one occasion where the landlord accompanied a tradesperson into the rental suite and began filming the tenants. The tenants also gave evidence that the landlord has made unwelcome remarks about the tenants. The parties testified that police have been called to the rental suite on a few occasions dealing with complaints from the tenants or the other residents.

Analysis

Section 46 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the present case the landlord has provided a number of complaints about the tenant and their conduct.

Residential Tenancy Policy Guideline 8 defines a material term as term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement. To end a tenancy for a breach of a material term the party alleging the breach must inform the other party in

writing that there is problem believed to be a material breach, that the problem must be fixed by a reasonable deadline, and if the problem is not fixed the party will end the tenancy.

The undisputed evidence of the parties is that the landlord gave verbal warnings but never issued a written notice of what they considered to be a material breach. Consequently, I find that the landlord has not established the basis for the tenancy to end for a breach of a material term. I make no finding on the materiality of the terms the landlord cites as material or whether there has been a breach.

The landlord claims that the tenant's conduct is an unreasonable disturbance to the other resident. The landlord's witness appeared and expressed their concern with the activities of the tenants. While I accept the evidence that the tenants have caused some discomfort to the other residents I find that it is far from amounting to a significant interference. The witness described the behavior as a "nuisance". I find that while the tenants would be wise to take additional steps to accommodate the other residents of the rental building, I do not find that there is sufficient evidence that their behavior has been so egregious that it would give rise to a reason to end the tenancy.

I find that there is insufficient evidence that the tenants or their visitors have put the property at any risk. While smoking may be considered an inherent fire risk I find that there is insufficient evidence that the property is at any greater risk than would ordinarily be expected.

I find that the landlord has not met their evidentiary burden of showing on a balance of probabilities that this tenancy should end for the reasons on the 1 Month Notice. Therefore, I allow the tenant's application and cancel the 1 Month Notice. This tenancy continues until ended in accordance with the *Act*.

I find that there is insufficient evidence in support of the tenant's application for the landlord to comply with the *Act* or to impose limitations on the landlord's right to enter the rental suite. While the tenants testified about the landlord's behavior that they found to be off putting I find that there is insufficient evidence that the landlord has acted in violation of the *Act*, regulations or tenancy agreement. Simply because one party called the police do not amount to evidence that there has been a violation. I would remind the parties that the provisions of the *Act* sets out the landlord's right to enter the rental unit and that all parties ought to conduct themselves in a courteous and respectful manner.

As the tenant's application was partially successful I allow the tenants to recover \$50.00 of their filing fee. As this tenancy is continuing the tenants may recover the monetary award by making a one-time deduction of \$50.00 from the next scheduled rent payment.

Conclusion

The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenants may make a one-time deduction of \$50.00 from their next scheduled rent payment.

The balance of the tenant's application is dismissed without leave to reapply.

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 10, 2019

Residential Tenancy Branch