

Dispute Codes OPC, CNC, FFL

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy, pursuant to section 47.

The tenants' application was originally adjourned to today's hearing in a Residential Tenancy Branch Decision dated January 7, 2019.

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

- an Order of Possession for Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No service issues were raised by either party. I find that the dispute resolution materials were sufficiently served on each party, for the purposes of this *Act*, pursuant to section 71 of the *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?
2. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2017 and is currently ongoing. Monthly rent in the amount of \$960.00 is payable on the first day of each month. A security deposit of \$480.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties; however only the first and last page were entered into evidence.

The landlord testified that on December 12, 2018 the tenants were personally served with a One Month Notice to End Tenancy for Cause with an effective date of January 31, 2019 (the "One Month Notice"). The tenants confirmed receipt of the One Month Notice on December 11, 2018.

The One Month Notice stated the following reasons for ending the tenancy:

- 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 or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - 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.

The landlord testified that the tenants significantly interfered with or unreasonably disturbed another occupant and herself by carrying their bikes through the hallway and up a flight of stairs from the front door of the rental building to the door to the subject rental property. The landlord testified that this action disturbs her because the bike frame touches the doors when the tenants pass through them.

The tenants testified that the bikes are easy to carry and that they have spoken with other tenants who told them that they are not bothered by the tenants carrying their bikes through the rental building.

The landlord testified that the tenants seriously jeopardized the health or safety or lawful right of another occupant or herself because the stairs the tenants traverse with their bikes are narrow and other tenants and herself must wait for the tenants to get off the stairs before they can use them.

The tenants testified that the hallway and stairs are not narrow, and they only infrequently encounter other people in the hallways/stairs when they are carrying their bikes. The tenants testified that waiting for them to descend or ascend the stairs while carrying their bikes in a minor inconvenience for other tenants and the landlord.

The landlord testified that the tenants put the landlord's property at significant risk because if the tenants dropped their bikes on someone, the landlord would be liable for the resulting damage.

The tenants testified that the only physical sign left on the rental property from them carrying their bikes in and out of their rental unit is some dirt marks on their front door. The tenants testified that they periodically clean their front door to remove the dirt marks.

I asked the landlord what illegal activity she is alleging the tenants committed. The landlord testified that the tenants breached section 20 of the tenancy agreement. Section 20 of the tenancy agreement was not entered into evidence.

The tenants testified that they have not engaged in any illegal activities.

The landlord submitted that on October 29, 2018 and November 14, 2018 she gave the tenants caution notices which stated that carrying their bicycles inside the rental building could lead to eviction.

Analysis

I find that the One Month Notice was served on the tenants on December 11, 2018, in accordance with section 88 of the *Act*.

Section 47(1)(d) states:

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,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find the landlord has not proved that the tenants carrying their bikes inside the rental building has significantly interfered with or unreasonably disturbed another occupant or herself. While it is clear that this activity bothers the landlord, I find that the possibility of the frame of a bike making contact with the door does not constitute significant interference or an unreasonable disturbance.

I find that the landlord has not proved that the tenants seriously jeopardized the health or safety or lawful right or interest of another by carrying their bikes in the rental building. I find that waiting for the tenants to ascend/descend the stairs while carrying their bikes is an act of courtesy and common sense. The act of waiting also decreases the likelihood of any injury that may occur from trying to pass the tenants on the stairs when they are holding their bikes. I find that the tenants are not seriously jeopardizing the health or safety or lawful right or interest of another by carrying their bikes in the rental building.

I find that the landlord has not proved that the tenants put her property at significant risk by carrying their bikes in the subject rental property. I find that a few scuff marks on the tenants' door and on nearby walls does not constitute a significant risk.

Section 47(1)(e) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:

- has caused or is likely to cause damage to the landlord's property,

- 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
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The term "illegal activity" includes a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The landlord gave insufficient evidence of illegal activity. I find that the landlord has not proved that the tenants engaged in any illegal activities.

I find that the landlord has failed to establish any of the reasons to end tenancy listed on the One Month Notice, and the One Month Notice is therefore cancelled and of no force or effect.

As the landlord was not successful in her application for dispute resolution, I find that she is not entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

The landlord's application is dismissed without leave to reapply.

The One Month Notice is cancelled and of no force or effect.

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 29, 2019

Residential Tenancy Branch