



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated December 27, 2018 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord MA ("landlord") and "landlord SA," and the two tenants, male tenant ("tenant") and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agents confirmed that they had permission to represent the landlord at this hearing. The landlord named in this application is the wife of the landlord and the mother of landlord SA. This hearing lasted approximately 60 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's written evidence package.

The tenant confirmed personal receipt of the landlord's 1 Month Notice on December 27, 2018. The landlord confirmed that the notice was served to the tenant on the above date using the above method. In accordance with sections 88 and 90 of the *Act*, I find

that both tenants were duly served with the landlord's 1 Month Notice on December 27, 2018.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Are the tenants entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

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

Background and Evidence

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

The tenant testified that this fixed term tenancy began on November 20, 2018. The landlord stated that the tenancy began on December 1, 2018.

Both parties agreed to the following facts. Monthly rent in the current amount of \$1,895.00 is payable on the first day of each month. A security deposit of \$950.00 was paid by the tenants and the landlord continues to retain this deposit. The tenants continue to reside in the rental unit.

Both parties agreed that the landlord issued the 1 Month Notice for the following reasons:

- *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.*
- *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;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord testified that the 1 Month Notice was issued to the tenants because he wants peace, the tenant made his wife have a stroke, and his wife needs to live in the rental unit because she can no longer climb stairs. The landlord claimed that the tenants caused a break-in to occur at the rental property, when there was no problem with break-ins before, but he cannot prove it was the tenants. He stated that the tenants did not provide any previous landlord references, the tenants refused to sign a tenancy agreement, there has never been a long term agreement for the tenants to live in the rental unit, and the tenants want to put a chimney in the rental unit. He explained that the tenants are running an illegal cooking business at the rental unit.

Landlord SA testified that the tenants have maintained a “campaign of harassment” against her parents and that the tenant is intimidating because he is larger in size than her parents. She maintained that the tenant constantly bangs on doors and calls her parents all day and night, leaving messages with swearing and “vulgar” language. She stated that this was “elder abuse.”

The tenant denied the landlord’s allegations as “malicious” and “lies” and explained that he does not thump on the floors or move furniture. He stated that the landlord is racially discriminating against him and that he has no criminal record. He said that he has a disability and he goes to bed early around 9:00 or 9:30 p.m. and wakes up early around 6:00 or 6:30 a.m. for work. He explained that he did not cause the landlord’s wife to have a stroke and he was sorry that happened to her. He maintained that he has references all around the neighborhood. He said that the landlord scared the female tenant by growling at her. He explained that the tenants did not cause any break-in at the rental property. He said that the tenants did not sign a written tenancy agreement and that the landlord did not provide the two missing pages for the addendum to the tenants.

Analysis

In accordance with section 47(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the 1 Month Notice on December 27, 2018 and filed their application to dispute it on January 4, 2019. Accordingly, I find that the tenants’ application was filed within the ten day limit under the *Act*. Where tenants apply to dispute a 1 Month Notice

within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord provided insufficient evidence to show that the 1 Month Notice was issued for valid reasons. I find that the landlord provided insufficient evidence to show that the tenants engaged in any illegal activities or were charged or convicted of any illegal activities. The landlord was unable to show that the tenants were engaging in an illegal cooking business or that they caused break-ins to occur at the rental property. The tenants disputed these allegations and the landlord provided insufficient documentary proof and no witness evidence regarding these claims. The landlord did not provide any proof of police reports, criminal records, or other such evidence of illegal activities.

I find that the landlord provided insufficient evidence to show that the tenants significantly interfered with, unreasonably disturbed or seriously jeopardized the health, safety or lawful right of the landlord or other occupants. The landlord provided insufficient evidence that the tenants caused the landlord's wife to suffer from a medical stroke. No medical records were provided for this allegation. Refusing to sign a tenancy agreement and refusing to provide previous landlord references are not sufficient reasons to end this tenancy. The landlord chose to begin a tenancy with the tenants despite not receiving the above information. The tenant calling the landlord regarding tenancy matters is permitted in order to maintain contact and so that both parties can successfully engage in the tenancy. The tenant disputed banging on doors and harassing the landlord and the landlord failed to provide sufficient documentary or witness evidence of this claim.

Accordingly, I allow the tenants' application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated December 27, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*. I also note that the 1 Month Notice does not contain an effective move-out date and therefore, does not comply with section 52 of the *Act*.

The tenants' application for an order for the landlord to comply is dismissed without leave to reapply. I find that the tenants have failed to provide sufficient evidence for this claim. In their application, they claimed that they had no plans to move out of the rental unit. At the hearing, they said that they did not want the landlord to stomp on the floor, they wanted the landlord to stop yelling at the female tenant and for the landlord to stop

turning off their water. They did not provide dates of the alleged breaches or further details of same.

As the tenants were mainly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated December 27, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenants to deduct \$100.00 from future rent payable at the rental unit to the landlord, in full satisfaction of the monetary award for the application filing fee.

The tenants' application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement 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: February 20, 2019

Residential Tenancy Branch