



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC CNC FFT FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties 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.

At the beginning of the hearing it was confirmed with both parties the proper spelling of the landlord’s name, which was spelled differently in the tenant’s application. As the spelling of the landlord’s name was confirmed as correct on the landlord’s application, the landlord’s name was amended to reflect that name on the tenant’s application.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the

Act, I find that both the landlord and tenants were duly served with the Applications and evidence.

The tenant confirmed receipt of the 1 Month Notice dated February 15, 2019, which was posted on his door the same date. In accordance with sections 88 and 90 of the Act, I find the tenant was deemed served with the 1 Month Notice on February 18, 2019, 3 days after posting.

Issues

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

Are both parties entitled to recover the filing fees for their applications?

Background and Evidence

This month-to-month tenancy began on March 3, 2016, with monthly rent currently set at \$500.00 per month, payable on the third day of each month. The landlord currently holds a security deposit of \$300.00. The tenant continues to reside in the rental suite. A copy of the tenancy agreement was submitted in evidence, which includes a different name for the landlord. The landlord JL testified that his father XH had signed the tenancy agreement as the landlord on his behalf, but that he, JL, was the landlord and handled the matters related to this tenancy. For the purposes of this application, JL will be testifying as the landlord in this hearing. Both parties confirmed that they did not want to amend either application to include XH's name.

The landlord submitted the notice to end tenancy providing the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided the following reasons for why he was seeking the end of this tenancy. The landlord testified that the tenant bangs on the walls and screams very light at night, which was often past midnight. The landlord testified that this would occur on a regular basis when the tenant is intoxicated. The landlord testified that the tenant disturbs the landlords as well as neighbours. The landlord testified that the police have attended, and the landlord provided the police file number in their evidence. The landlord testified that the tenant has threatened the mother, neighbour, and the baby.

The landlord submitted text messages, as well as audio recordings of what the landlord testified was the tenant screaming and banging. The landlord is seeking an Order of

Possession due to significant disturbance caused by the tenant to the landlord and neighbours. The landlord testified that the threatening nature of the text messages and threats have made the landlord and his family fearful for their safety as they reside in the same home.

The tenant disputes the landlord's 1 Month Notice, stating that the dispute stems from personal grievances. The tenant provided two personal statements in his evidentiary materials, as well as photos. The tenant testified that the landlord has lied in his submissions, and denies the statements made by the landlord.

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. The tenant filed his application on February 25, 2019, 7 days after considered to have been deemed served with the 1 Month Notice. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy.

The landlord provided recordings of what appears to be a man yelling and creating a disturbance. The tenant denies that this man is himself. The landlord also provided a photo of an officer's contact card, and a police file number. The landlord did not call on any witnesses to testify for this hearing, nor was there any confirmation that any charges have actually been laid against the tenant.

The tenant, himself, admits that he has had disagreements between himself and other parties, and that even the police have attended. The attendance of the police is not sufficient to support that the tenant has engaged in behavior that justifies the ending of a tenancy. I am also unable to verify from the audio recordings who the parties are, and when this took place. I find that upon review of the evidence submitted, and in consideration of the testimony provided for this hearing, the landlord has not met their burden of proof to show that this tenancy should end on the grounds provided on the 1 Month Notice.

Accordingly, the tenant's application to cancel the landlord's 1 Month Notice, is allowed. The landlord's 1 Month Notice, dated February 15, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful with his application, I allow his application to recover the filing fee.

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

Conclusion

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

I allow the tenant's application to cancel the 1 Month Notice dated February 15, 2019. The 1 Month Notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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 tenant is 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 landlord 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: April 12, 2019

Residential Tenancy Branch