



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 an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to comply with the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee.

GB attended as agent for the landlord (“the landlord”). The tenants attended. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord acknowledged receipt of the tenants’ Notice of Hearing and Application for Dispute Resolution. I find the tenants served the landlord in accordance with section 89 of the *Act*.

The tenants did not acknowledge receipt of the landlord’s materials. The landlord provided testimony that the landlord posted the package of evidentiary materials to the tenants’ door. However, both tenants testified that they did not receive the materials.

In the absence of supporting evidence that the landlord served the tenants with his materials, I will not reference the landlord’s filed materials in my decision.

Preliminary Issue 1

I informed the parties that in the event I dismissed the tenants' application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Preliminary Issue 2

The tenants applied for various remedies under the *Residential Tenancy Act* (the "*Act*").

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the issues before me at the start of the hearing, I determined that the most pressing issue dealt with whether the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all the grounds on the tenants' application except for the following:

- Application to cancel the One Month Notice pursuant to section 47;
- Application for reimbursement of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to the following:

- Cancellation of One Month Notice pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee.

Background and Evidence

The parties agreed the month-to-month tenancy began on June 1, 2018 and is ongoing. Monthly rent is \$1,200.00 payable on the first of the month. The tenants paid a 4600.00 security deposit at the beginning of the tenancy which the landlord holds. The unit is in the basement of a residence in which the landlord also resided.

The landlord claimed he warned the tenants about noise multiple times, “almost every day”, by text, telephone and letters. He testified that the tenants played music or television too loud and that the noise disturbed him and his family.

The landlord testified that sometimes the tenants answered the phone and turned the noise down when he called to complain. However, just as often, the tenants did not answer the phone or acknowledge texts; they ignored the landlord’s requests.

The landlord testified that he submitted “four or five warning letters” to the tenants, none of which were presented as evidence.

The tenants vehemently denied the landlord’s evidence. They stated that they both had busy work and educational commitments leaving little time for any other activities such as playing music or listening to the TV. They acknowledged that on one occasion, several months before, the landlord complained about noise from the TV, they immediately turned the volume down, and the landlord never complained again. The tenants testified they have never received written letters of complaint from the landlord.

The tenants stated that prior to the issuance of the One Month Notice, the landlord presented a Mutual Agreement to end Tenancy to the tenants. The tenants testified that the landlord was planning to marry, that he wanted to live in the unit, and that he asked the tenants to vacate voluntarily. The tenants said they refused. The tenants submitted a copy of the unsigned Mutual Agreement as evidence.

Subsequently, the tenants stated that the landlord contacted various members of their families, “threatening” the tenants through appeals to their families.

The landlord denied that he called the tenants’ families or exerted any pressure on anyone to get the tenants to leave.

The parties agreed the landlord issued a One Month Notice dated April 29, 2019 and personally served the tenants that day. The tenants submitted a copy of the Notice as evidence. The effective date of the Notice is June 1, 2019. The reason for the issuance

of the Notice is that the tenants “significantly interfered with or unreasonably disturbed another occupant or the landlord”.

The landlord requested an order of possession.

The tenants requested that the One Month Notice be cancelled.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 47(1)(d) of the *Act* states:

Landlord's notice: cause

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,...

The landlord claimed that the tenants repeatedly caused noise which significantly interfered with the landlord's home life. At the hearing, the tenants acknowledged receiving one phone call from the landlord several months prior to the hearing complaining about noise; however, they testified they did not receive any subsequent complaints including written warnings.

Based on the evidence the landlord produced at the hearing, I do not find any documentation that was provided to the tenants indicating that they were given written warnings informing them that they may be in violation of the tenancy agreement because of noise which significantly interfered with the landlord.

In consideration of the evidence and testimony, I find that the landlord has failed to meet the standard of proof on a balance of probabilities that the tenants significantly interfered with, or unreasonably disturbed another occupant, the only grounds upon which he issued the One Month Notice.

Accordingly, I cancel the One Month Notice. The tenancy will continue until it is ended in accordance with the agreement and the Act.

As the tenants are successful in their application, they may recover the \$100.00 filing fee of the Application. In lieu of a monetary order, I direct the tenants to withhold \$100.00 from a future rent payment on one occasion only.

Conclusion

The One Month Notice is cancelled.

The tenants may withhold \$100.00 as reimbursement for the filing fee from a future rent payment on one occasion only.

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: June 26, 2019

Residential Tenancy Branch