



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC RP LRE

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

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 landlords confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlords duly served with the Application. All parties confirmed receipt of each other's evidentiary materials

As the tenant confirmed receipt of the 1 Month Notice on July 8, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlords' 1 Month Notice be cancelled?

If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to make repairs to the rental unit?

Is the tenant entitled to an order to suspend or set conditions on the landlords' right to enter the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began in 2014, with monthly rent currently set at \$1,100.00, payable on the first of the month. No security deposit was collected for this tenancy. The tenant is the son of the landlords, and rents a suite in the home.

The landlords issued the notice to end tenancy providing 3 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;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

The landlords provided the following submissions for why the 1 Month Notice was issued. It was undisputed by both parties that the relationship between both parties has deteriorated significantly, and continues to, even after the issuance of the 1 Month Notice. The landlords described several examples in their testimony as well as their evidentiary materials of how their son and tenant had made the tenancy unbearable and

stressful to the extent that they feel that the tenancy cannot continue. The landlords sent the tenant a letter dated May 28, 2019, before they issued the tenant the 1 Month Notice. Below are some of the incidents described by the landlords.

The landlords testified that their tenant and son had used social media as a tool to bully and harass them. The landlords, in their evidentiary materials, submitted that the tenant had accessed their online social media account on July 11, 2019 and the landlords' password and email addresses were changed. The landlords testified in the hearing that messages were sent to family and friends. The tenant testified that he had posted on his own social media page, and it was a family member who had shared it to the landlords' page. The tenant testified that the actions were not one-sided as the landlords had also sent messages to his friends.

The landlords also expressed concern that the tenant had mounted security cameras without their permission. The tenant disputes this, stating that the landlords had actually assisted in the installation of these cameras, and that they were simply used for security reasons.

The landlords described how the tenant put their property at risk. The landlords feel the tenant had put their property at risk by installing a woodstove without their permission. Furthermore, the landlords testified in the hearing that the tenant had allowed more pets in the rental unit without their permission. The landlords expressed concern that the tenant was engaged in the act of growing marijuana, which caused the landlords a large increase in their electricity bill, and made it difficult for them to have guests over. The tenant testified in the hearing that the landlords were aware of the number of pets he had, and that he had a licence to grow marijuana for medical purposes. The tenant testified that he suffered from numerous medical issues, including depression and anxiety. The tenant testified that although he had faced difficulties, he was making an effort to improve his situation, and he had addressed the concerns addressed in the landlords' letter to him.

The landlords also expressed concern that the tenant's belongings occupy more than fifty percent of the common property, which the tenant disputes. The tenant testified that a large portion of the yard is used up by the trampoline, purchased for his daughter by the landlords. The tenant expressed concern that the landlords had entered his rental unit, and moved his belongings without his permission.

In addition to the application to cancel the 1 Month Notice, the tenant also made a request for an order to suspend or set conditions on the landlords' right to access the rental unit and for the landlords to comply with the *Act*. The tenant also requested repairs to his vehicle, which he states was damaged by the landlords.

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. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlords have the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered the concerns brought up by both parties, as well as the evidence that was provided for this hearing. It is clear from the testimony and evidence that the relationship between both parties has deteriorated significantly, which is complicated by the fact that both parties have more than a tenant and landlord relationship with each other. There is no dispute that both parties have engaged in actions that have caused significant stress to the other party. Although the landlords wish to end the tenancy, the tenant wants to remain.

As stated above, despite the deterioration of the relationship between both parties, the landlords still have the burden of proving that they have cause to end this tenancy on the grounds provided on the 1 Month Notice, as allowed by section 47 of the *Act*. The landlords feel that the tenant has put their property at significant risk. Although the tenant's behaviour may have caused the landlords to believe that the tenant had put their property at significant risk, the onus is still on the landlords to sufficiently support this. The landlords did not provide any letters or statements from their insurance broker or the fire department to support their claims, nor was any witness testimony provided in support of this claim. The landlords' belief that the tenant's actions put their property at risk, in the absence of sufficient supporting evidence or witness testimony, does not sufficiently support how the tenant had put their property at significant risk, especially to the extent that it justifies the end of this tenancy. Accordingly, I do not find that the landlords have met the burden of proof to end this tenancy on the grounds that the tenant has put their property at significant risk.

The second reason indicated on the 1 Month Notice is that the tenant, or a person permitted on the property by the tenant, has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. In light of the fact that much of the evidence was disputed by the tenant, such as the unauthorized installation of the cameras, or addition of pets without the landlords' permission, the onus falls on the landlords to support their testimony. I am not satisfied that the landlords had provided sufficient evidence to support how the tenant had seriously jeopardized the health, safety, or lawful right of the landlords to the extent that justifies the end of this tenancy on this basis.

Lastly, the landlords indicated on the 1 Month Notice that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Although I accept the landlord's testimony that the tenant's actions have caused them much stress, I find the dispute between both parties arises from ongoing actions from both parties. I find that the landlords have played a role in the ongoing dispute between both parties, and although I sympathize with the landlords that the relationship between the parties has deteriorated to the extent where the landlords no longer want the tenant to reside in their home, section 47 of the *Act* does not allow the landlords to end the tenancy for this reason.

Furthermore, only the second page of the 1 Month Notice was submitted in evidence. In order for a 1 Month Notice to be valid I must be satisfied that the 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form. As the first page was not submitted, I am unable to verify that the 1 Month Notice complies with section 52 of the *Act*.

For the reasons listed above, I allow the tenant's application to cancel the 1 Month Notice. The 1 Month Notice dated July 8, 2019 is hereby cancelled, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

The tenant filed an application requesting repairs to his vehicle.

Section 32 of the *Act*, which outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

As the *Act* does not apply to repairs to the tenant's personal belongings, including his vehicle, this portion of the tenant's application is dismissed without leave to reapply.

The tenant also requested an order to suspend or set conditions on the landlord's access to the rental unit, as well as for the landlords to comply with the *Act* and tenancy agreement. I have considered the testimony and evidence of both parties, and taking in consideration that both parties share common spaces, I am not satisfied that the tenant had provided sufficient evidence to support that the landlords had failed to comply with the *Act*. I dismiss these portions of the tenant's application without leave to reapply. I remind the landlords of the tenant's right to quiet enjoyment, as set out in section 28 of the *Act*.

Protection of tenant's right to quiet enjoyment

- 28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...
- (b) freedom from unreasonable disturbance;...
 - (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated July 8, 2019. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

I dismiss the remaining portions of the tenant's application 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: September 12, 2019

Residential Tenancy Branch