



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated August 27, 2019 ("One Month Notice").

The Landlord, the Tenant, C.L., and an advocate for the Tenants, S.M. (the "Advocate"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Landlord, J.E., was also present and provided affirmed testimony. J.E. is a caretaker and the Landlord's mother, who lives across the street from the rental unit ("Caretaker").

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- If the One Month Notice is confirmed, is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 31, 2019, with a monthly rent of \$1,800.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$900.00, and a pet damage deposit of \$450.00.

The Parties agreed that the rental unit has two bedrooms upstairs and two downstairs, plus another area. They also agreed that it has 1½ bathrooms.

The Landlord served the Tenants with a One Month Notice on August 27, 2019, by posting it on the door of the rental unit. The One Month Notice is signed, had the rental unit address, an effective vacancy date of October 1, 2019, and the following grounds for the eviction:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

On the One Month Notice the Landlord wrote:

Undocumented/unapproved tenants living in lower half of house.

Yard not maintained – it is the duty of a tenant whom has exclusive use of the yard to up keep and maintain.

Health and safety issues regarding garbage kept inside and outside of house. Storage shed filled up with Garbage bags and litter over yard and street front. Landlord has made attempts to offer help. In removal, was told it would be removed, however was not.

Extra Occupants

In the hearing, the Landlord said:

When I put the house up for rent, I wanted a small family taking care of the yard, a rental that would be maintained. If I'd known it was going to be a house meant for housing people of various ages, I wouldn't have rented to these people. I was not made aware of team sports, other than them playing baseball. I was not informed of their staying over – that was not discussed with us. Also, it continues to happen. These same people are continuing to come in at all hours of the day and night. This is people who are living there. I have to protect my property. This was not intended when we made tenancy agreement.

When we talked to them. We asked how many people were there to be, because I didn't want it rented out for a large number of people. The garbage, loudness, kids not on the lease, other adults living there.

The Parties agreed that the Tenants' immediate family consists of two adults and four boys aged 4 to 13.

The Tenant said she coaches a basketball team and that the players visit the rental unit at times. She said:

These are kids that nobody wanted around. I host their birthday parties. They like to come somewhere safe. Their parents use substances, but not only on the weekends. On occasion they do stay overnight – at the end of the summer there were about six extra children staying there for 2½ weeks. Some have parents who are in treatment, some are in foster homes. They are either at my Mom's house or my house.

The Landlord submitted over a hundred photographs and videos of what he describes as extra people living in the rental unit. The Landlord submitted handwritten notes describing the photographs, including comments such as:

Tue Aug 27

P 54 3:30 Guy/Girl dropped off

Wed Sept 11

P 70 8:10 Guy/Girl off to school

Thur Sept 12

P 71 8:33 off to school

P 72 3:20 home from school

P 76 5 pm Teens help bring in [??]

P 78 girl – blue top/grey shorts
 guy – white shirt/blk shorts

P10 6:05 Guy driving [Tenants'] truck

6:30 3 people (1 guy/2 girls) come home with Tenants

The Caretaker said when she was at the rental unit with an electrician once, she took a number of photographs that show a cluttered household. She also said that she counted eight extra beds. The Caretaker said: "She said she had three kids – it could have been four – her and [B.M.], and every now and then her 16-year old. I know there were supposed to be six people living there."

In the hearing, the Tenant acknowledged that there are extra people coming and going from the rental unit from time to time. She said: "They are my family. I have a very large extended family." The Tenant also said that she coaches a 15-boy basketball team "...who are most often at my house....On occasion they do stay overnight. At end of summer there were about six extra children staying there for 2½ weeks."

The Tenant said: "I had a lot of beds in my last home. You have to take everything with you. I have always had a lot of guests. There's nothing in the *[Residential] Tenancy Act* that says you can't have beds for people."

The Caretaker said:

I'm the caretaker. I live right across the street. I see everything. We have videos of these people coming and going. They come through the bottom door, they don't use the top door. But these ones are always there every day. They're not visitors or babysitters, because they're there when [C.L. and B.M.] are or are not there.

Property at Risk

The Landlord said: "There's a clause in the contract – if someone has exclusive use of the yard or property, they are to maintain it. The discussion was to maintain it. They showed interest in their yard. There was verbal confirmation and expectation that they would maintain the yard."

No one submitted a copy of the tenancy agreement.

The Landlord said that "the entire yard was not kept up until the eviction notice went up." The Landlord directed my attention to four photos he submitted showing the condition of the yard before the tenancy started. It showed raised garden beds, plants, trees and a fence and arbour. The Landlord also uploaded photos of the arbour lying broken on the ground, which he said occurred after the tenancy began. The Landlord submitted a video recording showing children climbing on a fence that the Landlord said was the residential property. The Tenant did not deny that those who were climbing on the fence were her children or guests she allowed on the property.

The Landlord said that the Tenants leave garbage all over the yard. He submitted photographs of what he said was the front yard, which had a pop can, a small bottle, and something that looks like a sock left on the lawn. He said this picture was from August 23, 2019.

The Landlord directed my attention to another photograph he submitted, which shows boxes, full garbage bags, and other items piled at the side of the house, which is visible from the road. The Landlord said that these items were left there "...for several days up until August 13th, 2019." He said the Tenant told him that these were garbage bags of clothes etc. from my very large family as we unpack."

In the hearing, the Tenant said:

When we first moved in, we had informed [the Caretaker and the Landlord] that there are always people at my house. The garden area and arbour . . . the wind knocked it down. [The Caretaker] said it doesn't happen. According to [my husband], he had picked it up and picked it up. But I'd like to point out how rotted the wood was. And they didn't do anything to tie it down or make sure it wasn't going to tip over.

I don't watch the garden. I come from work, make dinner. . . it was getting into

the fall and winter time. We were worried about unpacking. 13 days into unpacking we were informed that he was going to sell the rental unit, so there's no guarantee we're staying. After that I informed him I had no intention of unpacking if it was going to be sold. I understand that the lease goes with the house, but if someone else wants to move in.... Packing is a big job, especially when two adults are working full time.

After the eviction notice, they asked to do a walk-through. We didn't get written notice of that, it was a Facebook notice. They did the walk-through. The arbour was down and he asked me what happened. From what I'm told, it was knocked down in the wind, which [B.M.] said. It just started tracking and he didn't want to hold it up. The Landlords were told this face to face in the walk through with them, but they didn't do anything.

The Landlord said that he has owned the property since May 2019, and "It never fell down. Something must have forced it."

The Tenant pointed to two of the Landlord's photographs, saying: "You can clearly see it has never been bolted on the ground." The photographs she pointed to show the arbour in pieces on the ground. It is unclear from these photographs what was keeping it up originally. The Landlord said that it was attached to the wood of the raised gardens beside which it had been standing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

First, I find it relevant to note that the tenancy started on July 31, 2019. I find that the Landlord did not give the Tenants sufficient time to get settled into the residential property, before making demands of them. The Tenants' evidence is that the adult tenants both have full time jobs, which I find limited the time in which they were able to unpack and get settled.

Further, there was no evidence presented to me during the hearing that the Landlord gave the Tenants written notice of the deficiencies in their actions relating to the rental unit. Rather, the Landlord served the Tenant with the One Month Notice less than a month after they had moved in.

In addition, based on the extensive evidence before me, I find that the Landlord's and the Caretaker's behaviour in observing and recording the Tenants was intrusive and inappropriate. A tenant has a right to quiet enjoyment of the rental unit without the constant invasion of privacy that the Landlord has demonstrated in the case before me.

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:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 ("PG #6") states:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

These factors and considerations of the evidence have influenced my findings, as follows.

Extra Occupants

Section 47(1)(c) of the Act allows a landlord to end the tenancy for the following reason:

(c) there are an unreasonable number of occupants in a rental unit

This section of the Act is fairly subjective, and therefore, the arbitrator must determine whether or not the landlord has shown that, in this situation, the number of occupants in the rental unit is unreasonable. The number of occupants in a rental unit may be reasonable in one situation and yet unreasonable in another.

It is the landlord's burden of proving on a balance of probabilities that the number of people occupying the rental unit is unreasonable.

In the evidence before me, I find that the Tenants have allowed more people to occupy the rental unit than was initially discussed and agreed on by the Parties. However, I find that these extra people are not living in the rental unit permanently, but rather, for short periods of time, given the particular circumstances that arise.

I find that the Landlord has not provided sufficient evidence that this situation is causing damage to the residential property or why it is an issue for him.

The Tenants are cautioned to remember that the rental unit is a single-family dwelling and it is not appropriate housing for a basketball team or members of an extended family to occupy. Further, the Parties did not agree that the rental unit was to be used as a foster home for the Tenants' benevolent activities.

However, again, I find that the Landlord has not provided sufficient evidence that the number of guests the Tenants invite to the rental unit is detrimental to the residential property, such that it should lead to the end of the tenancy. Accordingly, I dismiss the Landlord's claim in the One Month Notice that the Tenants have an unreasonable number of occupants living in the rental unit.

Property at Risk

I find from the Landlord's testimony and other evidence that the claimed risk to the property is based on "garbage" left around the property and the damage that occurred

to the arbour during the first month of the tenancy. I find the Landlord is claiming that the Tenants' treatment of the yard amounted to a breach of a material term of the tenancy agreement.

Section 47 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:

...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Further, RTB Policy Guideline 8 (PG #8) states:

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

The Parties did not submit a copy of the tenancy agreement for my consideration. When I asked the Landlord which clause set out that these matters are “material” to the tenancy, the Landlord and Caretaker said that they had asked the Tenants about their interest in doing garden work. I find the Landlord was satisfied with the Tenants’ answers in this regard, because they agreed to rent the residential property to the Tenants. However, I find that this does not make whatever was said between the Parties a “material term” of the tenancy agreement.

The **parol evidence rule** prevents the introduction of evidence of prior or contemporaneous negotiations and agreements that contradict, modify, or vary the contractual terms of a written contract when the written contract is intended to be a complete and final expression of the parties' agreement. Accordingly, I find that “yard care” is not a material term of the Parties’ tenancy agreement and it is not a basis for ending the tenancy. I dismiss the Landlord’s claim in the One Month Notice that the Tenants breached a material term of the tenancy.

However, section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant’s pets. Section 37 requires a tenant to leave the rental unit undamaged. Sections 32 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 (“PG #1”) helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

PG #1 also addresses property maintenance, regarding the residential property yard:

PROPERTY MAINTENANCE

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

[emphasis added]

GARBAGE REMOVAL AND PET WASTE

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

The evidence before me is that the Landlord's arbour in the yard was damaged during the tenancy; however, there is little evidence of how this occurred. Still, given the video of the children climbing on the fence at least once, I find it more likely than not that the Tenants' children, including guests, climbed on the arbour, which caused it to break and fall over. However, as this is speculation, I find it an insufficient basis to determine the end of the tenancy.

As noted above, a tenant is responsible for making "...repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets." Further, section 37 requires a tenant to leave the rental unit undamaged. More often than not, these sections of the Act are directive at the end of a tenancy, rather than in the first month of a tenancy.

The Tenants are cautioned to abide by their obligations in the Act and Regulation in maintaining the residential property. These obligations outweigh a person's interest in philanthropic pursuits toward others. If there had been evidence before me that the additional occupants of the rental unit had been there for a longer term, this Decision might have had a different outcome.

The Landlord and Caretaker are cautioned to abide by their obligations under the legislation with respect to the Tenants' right to quiet enjoyment of the rental unit. These obligations outweigh a landlord's desire to micromanage his property on a day-to-day, hour-to-hour basis.

I find the Tenants are successful in their Application to cancel the One Month Notice, as the grounds of this One Month Notice are not valid in the circumstances before me. I cancel this One Month Notice and find that it is of no force and effect. The Tenancy continues until ended in accordance with the Act.

Conclusion

The Landlord did not provide sufficient evidence to establish that the Tenants were in breach of a material term of the tenancy agreement or that they put the rental unit at

risk. The One Month Notice is cancelled. The tenancy continues until ended in accordance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 6, 2019

Residential Tenancy Branch