



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' Application #1: CNC, OLC
Tenants' Application #2: CNC, LAT, LRE, OLC

Introduction

This hearing was convened as a result of the Tenants' two Applications for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for the following:

- to cancel a One Month Notice to End Tenancy for Cause dated October 2, 2019 ("One Month Notice");
- for an order for the Landlords to comply with the legislation and tenancy agreement;
- for an authorization to change the lock; and
- for an order for the Landlords' right to enter be suspended or restricted.

The Tenants, B.G. and D.G., and the Landlords, K.B. and G.B., 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.

During the hearing, the Tenants and the Landlords 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 ("Rules"); 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.

I explained to the Parties in the hearing that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated several matters of dispute on the Applications, the most urgent of which is the Application to set aside a One Month Notice. I find that not all the claims on the Applications are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants' request to set aside the One Month Notice at this proceeding. Therefore, the Tenants' other claims are dismissed, with leave to re-apply.

Issue(s) to be Decided

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

Background and Evidence

The Parties agreed that the periodic tenancy began on December 15, 2018, with a monthly rent of \$1,200.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$625.00, and no pet damage deposit. The Parties agreed that the residential property is a triplex with three suites; the Tenants live in one suite, and the Landlords live in another.

The One Month Notice submitted by the Tenants is signed, dated, has the rental unit address, was served in person on October 2, 2019, and has an effective vacancy date of November 2, 2019. The grounds for the eviction set out on the One Month Notice include that the Tenants:

- jeopardized a lawful right or interest of another occupant or the landlord.
- allowed an unreasonable number of occupants in the unit/site;
- 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; and

The Landlords also wrote the following on the One Month Notice in a box labelled “Details of Cause(s)”:

Harassment, not feeling safe with them. Trying to enter in my personal property always saying keep unlock door between us. Unknown person living without permission after warning. Illegal activities of unknown persons mails coming on my home address. Mail was not include when I rented trying to get mail key and.... [other side of page with rest of note not included]

[reproduced as original]

At the end of the hearing, the Tenants and Landlords said they respect each other and have no hard feelings. However, during the hearing, it became apparent that they have different, sometimes conflicting expectations of each other, which I find has caused misunderstanding and frustration in all Parties, as set out below.

Security Issues – Keys and Locks

The Landlords lock the door that gives the Tenants access to the laundry room, as it also gives the Tenants access to the Landlords’ suite. Instead, the Landlords unlock the laundry room door at times in which the Tenants are allowed to do laundry.

Further, the Landlord, G.B., said that in order to try to save electricity, he addressed the Tenants about the amount of time they used the dryer at least once. The Tenants said given these laundry-related issues, the Tenants said they felt like the Landlords did not want them using the laundry facilities. The Tenants said they now take their laundry to a laundromat to avoid the frustration of doing laundry at the residential property.

The Landlords have security cameras outside the residential property. In the hearing they said this is for the protection of all of the tenants and occupants. However, the Tenants said they fear that they are being watched by the Landlords, possibly even inside the rental unit. In the hearing, the Landlord tried to reassure the Tenants that the cameras are on the outside of the property only, and are intended to enhance everyone’s safety.

Another miscommunication involved the means by which the mail is accessed at the residential property. The Landlords did not give the Tenants a key to the mail box, but

rather, they give the Tenants the mail as it comes. However, the Parties testified that this resulted in a few problems for the Tenants, and contributed to the Landlords' fear of the type of person to whom they are renting. The Tenant, B.G., said her son is currently incarcerated and needed a copy of this birth certificate; however, he did not want it sent to the corrections facility, therefore, he asked his mother to order it for him. A problem arose, because the son has a different family name than that of his mother, so the Landlords did not recognize the mail as belonging to the Tenants when it arrived. The Landlords said it appeared to be an important government document, so they sent it back as having been sent to the wrong address. As a result, the Tenant had to re-apply for her son's birth certificate. She said she started the process of requesting this document in February 2019 and did not receive the second birth certificate issued until the middle of October 2019.

The Tenants also said that the Landlords do not give them their mail more than once every three or four weeks. As a result of these and other mail difficulties, the Tenants said they have had to get a different mail box, which, the Tenant said "isn't cheap."

Unreasonable Number of Occupants

The Landlords said that another problem arose when one of the Tenants' guests parked his camper truck in the Landlords' driveway. The Landlord, G.B., said that he has a big driveway and that sometimes people park there to pick up kids from the school next door. He said this was what he thought was going on, as no one in the residential property had told him to whom the camper truck belonged. The Landlord said: "When I woke up that truck was still in my parking lot. Nobody tells me that. Who parked that truck? One guy came from the basement and said, 'this truck belongs to me.' If you want to park here, no problem, but please tell us, because if nobody tells us and we call a tow truck, that is our problem if nobody tells us."

The Landlord, G.B., commented on a person the Tenants allowed to live in the rental unit for a period of time, saying:

That third person living in my house. When he moved here [B.G.] said he's here for some time. He's here without any extra money for me. He's doing laundry for them. We never complained about that guy, because it's okay. . . we even didn't ask for his name. We never asked anything.

On another matter, the Tenants said that the Landlords complained about a party they had. The Tenants said that it was a surprise party for the Tenant, D.G.'s, birthday and

that ten people attended. The Tenant, B.G., said: "They say our place is a pig sty. She has her illegal mother living there, all these people in and out of their house, and she complains about us throwing one party. The Landlords said that they did not say anything about that party.

Unreasonably Disturbed Another Occupant

The Landlords said that another of the tenants in the residential property complained about the Tenant, B.G., because when the other tenant sneezed, B.G. said "bless you" through the apartment wall. The Landlord said:

The other tenant moved to the other suite after two weeks, because of [B.G.'s comment]. They said, 'we want our privacy'. She complained that [B.G.] said 'bless you' every time they sneezed. We asked her to not do that, she said okay, but she does the same thing. They moved from here.

The Tenant, B.G., said:

When the last people lived here for two weeks, we had coffee. Yes, I did say 'bless you' one morning. That was a mistake on my side. Their bedroom door opens into my living room. We have no privacy in this house. I swear there are cameras in my home; they know everything we do. They want to know everything. If I go outside for a cigarette, someone's on that balcony. I found a job, but given the stress level here, they laid me off until the stress is under control.

Seriously Jeopardized the Health or Safety

The Landlords did say they do not like it when the Tenant goes outside to smoke, because they say it wafts up to their balcony.

The Landlords denied that they watch or are aware of the Tenants' movements. They said:

Even she said she doesn't have peace of mind in this house. Why does she want to live here? We hate the smoke smell, so if she smokes and we stand there, we smell the smoke. I don't know why . . . we don't have that much time . . . nobody has that much free time to watch her.

Near the end of the hearing, the Landlord, G.B., said:

Basically [the Tenants] mean they don't find peace of mind in my house. If someone is not happy...; we are all working guys. We all have so many stresses in our life, so we want peace of mind. That's my request to [the Tenants]: if you want to move from here, I can help you to find another place. You can find some cheap place. . . it would help you financially.

Analysis

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

I find that the Landlord has not provided sufficient evidence to establish any of his grounds for the eviction on the One Month Notice. I find that the Parties are experiencing the challenges and frustrations of people living together in close quarters with different expectations and styles of communication. I find this is not a basis to end a tenancy under the Act, as explained below.

1. Jeopardized a lawful right or interest of another occupant or the landlord:

The Landlords did not specify which aspect of this ground applied in their situation, although I find it involved the security surrounding the locked laundry room and mailbox keys. I find there is insufficient evidence before me that the Tenants jeopardized a lawful right or interest of any other occupant or the Landlords in the residential property. I, therefore, dismiss this ground as not supporting the validity of the One Month Notice.

2. Allowed an unreasonable number of occupants in the unit/site:

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, an 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 allowed a friend to stay with them for

a relatively short period of time. The Landlord did not direct me to any clause in the tenancy agreement that restricts the Tenants in this regard. Further, the Landlords said they did not say anything to the Tenants about this guest or the party they held. I find the Landlords did not warn the Tenants that these occurrences were a problem; therefore, I find that to rely on them as a ground to evict the Tenants is administratively unfair.

Based on the evidence before me overall, I find that the Landlord has provided insufficient evidence that the Tenants allowed an unreasonable number of occupants in the unit/site. As such, I find this ground does not support the validity of the One Month Notice.

3. Significantly interfered with or unreasonably disturbed another occupant or the landlord:

The Landlords' basis for this claim appears to involve one of the Tenants having said "bless you" through the wall to another occupant or tenant of the residential property. The evidence before me is that when the Tenant was advised that this behaviour was disturbing another occupant, she stopped doing it. Therefore, I find this is not a sufficient basis for ending the tenancy. I find on a balance of probabilities that the Landlord has not provided sufficient evidence to support this ground of the One Month Notice.

4. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord:

The Landlords did not specify which aspect of this ground applied in their situation. They said they did not like it when the Tenant smoked outside the rental unit; however, they did not point out anything in the legislation or tenancy agreement that prohibits her from this behaviour. I find that the Landlords did not provide sufficient evidence to support this ground of the One Month Notice.

When I consider all the evidence before me overall, I find that the Landlords have not provided sufficient evidence to meet their burden of proof on a balance of probabilities to support the validity of the One Month Notice. I find the Tenants successful in their Application and I cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect. The tenancy continues until ended in accordance with the Act.

Conclusion

The Tenants are successful in their Application to cancel the One Month Notice. The Landlords did not provide sufficient evidence to support the validity of the grounds of the One Month Notice. The One Month Notice is of no force or effect. The tenancy continues until ended in accordance with the Act.

The Tenants' other claims are dismissed with leave to reapply, pursuant to RTB Rule of Procedure 2.3.

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 06, 2019

Residential Tenancy Branch