



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, CNC, LRE, OLC, RR, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

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

The tenants' applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlords served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail for each tenant. Both parties also confirmed the tenants served the landlords with their

notice of hearing package and submitted documentary evidence. Neither party raised any service issues. I accept the affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset, the application for the tenants was clarified. Both parties also confirmed that the landlord's application has specified the incorrect rental address for this dispute. Both parties consented to the landlord's application being amended to include "Barn Basement" as the dispute address. The tenants confirmed in their direct testimony that besides their request to cancel the 1 month notice, the remaining issues selected were unrelated to the 1 month notice. As such, pursuant to RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenants have applied for a monetary order for money owed or compensation for damage or loss, for an order for the landlord to comply with the Act, for an order authorizing a rent reduction and an order to suspend or set conditions on the landlord's right to enter the unit as these sections of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for cause, I dismiss these sections of the tenants' claim with leave to reapply. The hearing shall proceed only on the landlord's request for an order of possession and recovery of the filing fee and the tenants' request to cancel the 1 month notice and recovery of their filing fee.

Issue(s) to be Decided

Are the landlords entitled to an order of possession?
Are the landlords entitled to recovery of the filing fee?
Are the tenants entitled to an order cancelling the 1 month notice?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on July 1, 2019 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated July 1, 2019. The monthly rent is \$1,430.00 payable on the 1st day of each month. A security deposit of \$650.00 was paid on July 1, 2019.

Both parties confirmed the landlords served the tenants with a 1 month notice to end tenancy issued for cause dated September 6, 2019 via Canada Post Registered Mail on September 6, 2019. The landlord provided a copy Canada Post Customer Tracking label as proof of service. The 1 month notice dated September 6, 2019 provides for an effective end of tenancy date of October 31, 2019 and 3 reasons for cause selected as:

- the tenant or person permitted on the property by the tenant has:
 - 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;
 - put the landlord's property at significant risk.

The details of cause state:

THENANT HAS THREATENED OTHER TENANTS ON THE DISPUTE PREMISES. HAS INTERFERED WITH & DISTURBED ANOTHER OCCUPAANT.
[reproduced as written]

The landlords stated that the tenant, I.S. made threats to another tenant, M.O. The landlords stated that M.O. received a text message from the tenant, I.S. on August 28, 2018. The landlords called the tenant, M.O. as a witness who provided affirmed testimony. The tenant, I.S. disputed the landlords' claims.

The witness/tenant, M.O. provided affirmed testimony that she feels unsafe due to an incident in which she received a text message from the tenant, I.S. on August 28, 2018. Both parties confirmed that the submitted copy of the text message states in part,

So if see you're cats are hunting the birds or rabbits...I can hunt your cats..? (Tenant, I.S.)

How is that the same? Do you own those birds?
(Witness, M.O.)

I guess you should read the law on cats..they are NOT allowed to kill wildlife..

On top of that..your cats are on my property..not yours
BTW..it's garbage day this Friday..your turn to take it out..Friday black..2
bins...your yard..act like it's yours...and what part of this yard are you taking care
of...?

(Tenant, I.S.)

Please do not contact me if you have issues regarding property maintenance and
garage removal you need to contact the property manager.

(Witness, M.O.)

The witness stated that the police were called, but that no action was taken.

The tenant, I.S. asked the witness, M.O. "When was the last time I talked with you?"
The witness responded by saying, "I last spoke to you on August 29, 2018." The
witness also stated, "never again after that". The tenant stated that she has had "a
feeling of being unsafe" since August 29, 2018, despite no further contact or
communications with the tenant, I.S.

The tenant, I.S. provided undisputed affirmed testimony that at the time the original
landlord had resolved the issue with the two parties by asking them not to have any
interactions or communications. Both parties confirmed that this was arranged on
August 29, 2018 and that no further contact has been made by either party.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a
balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of both parties that the 1 month notice dated
September 6, 2019 was served to the tenant via Canada Post Registered Mail on
September 6, 2019.

In this case, the landlords issued the 1 month notice on September 6, 2019 based upon
an incident that took place on August 28, 2018 prior to them taking possession of the
property from the previous owner. Both parties confirmed that a text message (noted
above) was sent to the witness by the tenant on August 28, 2018. Both parties agreed
that at that time the landlord requested that both parties stop all contact between them

on August 29, 2018. Both parties confirmed that as of the date of this hearing, no contact between the parties has occurred.

I find that the landlord has failed to establish a claim that the tenant threatened the witness as per the text on August 28, 2018. I further find that to issue a notice to end tenancy on September 6, 2019 for an incident that took place on August 28, 2018 is unwarranted. Especially when both parties confirmed that no further contact has occurred since August 29, 2018 when the previous landlord had requested that no contact occur between the parties.

The landlord's 1 month notice dated September 6, 2019 is cancelled. The tenancy shall continue.

The landlords' application is dismissed without leave to reapply.

The tenants having been successful are also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenants' application is granted. The landlord's 1 month notice is set aside and cancelled. The tenancy shall continue.

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: November 25, 2019

Residential Tenancy Branch