



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rajpur Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

In this dispute, the tenants sought to cancel a One Month to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the *Residential Tenancy Act* (“Act”). They also sought an order that the landlord comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act, and, recovery of the Residential Tenancy Branch filing fee under section 72 of the Act.

The tenants applied for dispute resolution on December 3, 2019 and a dispute resolution hearing was held on January 28, 2020. The parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

It should be noted that while I have reviewed evidence submitted that met the *Rules of Procedure*, under the Act, and to which I was referred, I have only considered evidence relevant to the issues of this application. As such, the parties may not see the entirety of their testimonies reproduced below.

Issues

1. Are the tenants entitled to an order canceling the Notice?
2. Are the tenants entitled to an order under section 62 of the Act?
3. Are the tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on May 1, 2017 and is currently a month-to-month tenancy. Monthly rent, which is \$950.00, is due on the first of the month. The tenants paid a security deposit of \$475.00 and a pet damage deposit of \$475.00. A copy of the written tenancy agreement was submitted into evidence. The tenancy agreement indicates that there is an addendum, although a copy of the addendum was not provided.

The landlord (who is the landlord's agent and building manager) testified that on October 28, 2019, the tenant ("C.") came to the landlord's front door at 7 AM and pounded on the door. The tenant was yelling and blaming the landlord for putting grease on an electrical cord that was hooked up to an exterior Halloween light display. The argument involved the tenant telling the landlord that he should not be plugging the display in and that it is a hazard. The tenant then stormed to the elevator and then returned to the landlord's front door. The landlord was standing in the hallway wearing his underwear. Next, the tenant's wife (tenant "K.") apparently came out to calm the tenant down. Video evidence of the interaction was submitted into evidence.

According to the landlord, the background and reason for the lead up to this incident is because the landlord enjoys decorating the exterior (it is a multi-unit-style apartment building) at holidays. The landlord's wife is a Wiccan and he is pagan. They like to celebrate certain holidays, especially Halloween. However, he said that every year the tenant has a bit of a problem with the decorations, so he has had to scale it back.

Later that day, the tenant showed up at the landlord's door around 1 PM and apologized for the earlier yelling, and he also had a "to do" list for the landlord, related to various things. The landlord testified that "I can't have tenants coming and pounding on my door" as in the manner that the tenant had.

And so, on November 26, 2019, the landlord issued the Notice by way of registered mail. A copy of the Notice was submitted into evidence, and page two of the Notice indicates that the tenancy is to end because (1) the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, and (2) the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

Under the "Detail(s) of Cause" section of the Notice the following was written:

On Oct 28, 2019 the tenant woke the landlord up pounding on door at 7am to yell and swear at landlord in a threatening manner. This is not the first time this has happened!

Tenant C. testified that the landlord's "case is weak at best . . . but malicious [at worst]." He testified that he has no problems with holidays or Halloween, but he does have a problem with the extent to which the decorations have proliferated on the property and the potential fire hazard that they have caused. He spoke about sodium vapor lights that shone into the rental unit's bedroom, and described being kept awake at night because of five, six, maybe seven inflatable dolls on the lawn that emit noise.

In addition, the lights were often left on throughout the night, disturbing his and his wife's sleep. He contends that the argument was about the hazard that the decorations cause, not with the decorations themselves or with the holiday for which they are associated. As summarized, he explained that he is "upset with the landlord because he's risking lives just because he wants to have his inflatable toys on all night." He also testified that about a rather noisy toy witch decoration that "cackled through the entire night," thanks to the wind constantly setting off the toy's motion sensor.

Both parties spoke at length about the electrical cords running to and from the building, various potential fire hazards, the presence and attendance of the fire chief, grease on the electrical cords, and other matters pertaining to the inflatable toys. However, as noted previously, I do not find any of these matters to be particularly relevant. This is not to say that they are not important, because the parties clearly do not have the best relationship, but they are not central to the issue of the Notice being served. I also note that the tenants submitted various photographs and the landlord submitted various videos regarding the issues that were discussed.

Finally, while the tenants applied for an order that the landlord comply with the Act, the regulations, or the tenancy agreement pursuant to section 62 of the Act, I did not hear anything further on this particular claim. I note that the tenants' application includes the following particulars regarding this head of relief:

Landlord has breached PIPA by improperly collecting, using, or disclosing the tenant's personal information; according to the OIPC.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice in this dispute was issued under section 47(1)(d)(i) of the Act, which permits a landlord to end a tenancy if

- (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,

and under section 47(1)(e)(ii) of the Act, which permits a landlord to end a tenancy if

- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that [. . .] (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property [. . .]

I have reviewed the video evidence submitted by the landlord. I have carefully considered the testimony of both the tenants and the landlord. I have come to the conclusion that there was indeed an argument between the parties on the morning of October 28, 2019, but nowhere is there evidence that this one-time argument between the parties constitutes a significant interference or an unreasonable disturbance of the landlord's building manager. Certainly, it may have been an interference or a disturbance at that time of the day, but I do not find that it rose to the level of causing such a significant interference or unreasonable disturbance that this tenancy must end.

This is not to say, however, that the tenants could not have chosen a less-confrontational approach to the issues. However, the tenant's pounding on the door and yelling in this case does not meet such an egregious level of behavior that ought to lead, I find, to the tenants being evicted. I also note that the Notice states that "[t]his is not the first time this has happened!", but there was no evidence that there were previous, similar incidents. Finally, there is no evidence to prove that the tenants engaged in any illegal activity that might give rise to the second ground on which the Notice was issued.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the grounds on which the Notice was issued. Accordingly, I order that the Notice is cancelled, and it is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

Regarding the tenants' claim for an order under section 62 of the Act, there is insufficient evidence for me to find that any such order ought to be issued. I dismiss this aspect of the tenants' application without leave to reapply.

Finally, as the tenants' were successful in their application to cancel the Notice, I award them recovery of the filing fee in the amount of \$100.00. In full satisfaction of this award the tenants are entitled to retain \$100.00 of the rent for March 2020.

Conclusion

I hereby order that the Notice is cancelled.

I hereby grant the tenants a monetary award of \$100.00.

I dismiss the tenants' application for an order under section 62 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: January 28, 2020

Residential Tenancy Branch