



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

LW appeared for the tenants in this hearing. Both parties 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 landlord's agent confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

I note that both parties were reminded several times during the hearing that disrupting the other party while they were providing sworn testimony will not be permitted.

The tenants confirmed receipt of the 1 Month Notice on December 9, 2019. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

At the outset of the hearing LW indicated that he had moved out, and had returned the keys to the landlord. After discussing the matter between the parties, LW testified that the tenancy has not yet ended, and that he still wished to dispute the 1 Month Notice issued by the landlord. The landlord indicated that she was still seeking an Order of Possession. The hearing proceeded.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on February 15, 2019, with monthly rent currently set at \$1,100.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$550.00 for this tenancy.

The landlord issued the notice to end tenancy providing the following 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.

The landlord testified that the 1 Month Notice was issued in response to complaints from a neighbouring unit. The landlord provided testimony in this hearing, as well as submitted documentary evidence in support of her claim, which included correspondence by the neighbouring tenants, the tenant SE who resides in this rental unit with LW, and a warning letter sent to the tenants.

The landlord testified that on August 19, 2019 she received a written complaint from the neighbouring tenants complaining of verbal threats as well as pounding on an adjoining wall. The landlord testified that the next day, the tenants discovered an empty zip lock baggie, which they believe was “generally used for an illegal drug substance”. The landlord issued the tenants a notice of complaint on their door notifying them of the complaint. The landlord received a response from the tenant LW on August 24, 2019 citing loss of quiet enjoyment.

The landlord testified that she had investigated the matter, and determined that the issuance of the 1 Month Notice was necessary. The landlord testified after her investigation, she determined that the LW was the party who was responsible for the loss of quiet enjoyment. The landlord testified that the neighbours have been residing there for 6 years with no issues.

The landlord included a letter from the tenant SE confirming that she has had no issues with the other tenants in the building, including the neighbouring tenants, and that she has not heard any loud noises or banging from their apartment.

LW testified in this hearing and was extremely upset about the allegations. LW testified that the harassment was initiated from the other parties, and that he was the one being called names and threatened. LW testified that he had called the police, and was advised to avoid contact, which he has, but is still being harassed.

Analysis

Section 47 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 tenants filed their application

within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

In light of the conflicting testimony from LW, I am not satisfied that the landlord has provided sufficient evidence to support that the tenants have significantly interfered with or disturbed the landlord to the degree that is serious enough to warrant terminating this tenancy on that basis. I find that there is an ongoing dispute between LW and the neighbouring tenants, and despite the existence of a dispute, I am not satisfied that the landlord had provided sufficient evidence that LW is the one initiating or solely responsible for the confrontations and disputes.

I am not satisfied that the landlord has met the burden of proof to demonstrate that this tenancy should end on the grounds that the tenants have significantly interfered with or disturbed other tenants or the landlord, especially to the extent that this tenancy should be terminated on the grounds provided in the 1 Month Notice. Accordingly, I am allowing the tenants' application for cancellation of the 1 Month Notice. The tenancy will continue as per the current tenancy agreement until ended in accordance with the *Act*.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice. The 1 Month Notice dated December 9, 2019 is cancelled and is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: February 7, 2020

Residential Tenancy Branch