



Dispute Resolution Services

Page: 1

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.

MF and GD represented the landlord in this hearing. The tenants attended with their advocate DD. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord's agents 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. The tenants testified that they did not receive a photograph from the landlord, but they took no issue with the admittance of this photograph.

The tenants confirmed receipt of the 1 Month Notice dated December 22, 2019. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

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 1, 2015, with monthly rent currently set at \$844.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$400.00, which the landlord still holds.

The landlord issued a 1 Month Notice to End Tenancy on December 22, 2019 providing 3 grounds:

1. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
2. The tenant or a person permitted on the property by 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.
3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or health of another occupant or the landlord.

The landlord's agents testified that they had ongoing issues with the tenant and her sons since 2015. The landlord submitted several complaint letters and warning letters dating back to 2015. The landlord testified that although they have not submitted any written warnings or letters of complaint that are recent, the tenants and her sons have been given verbal warnings.

It was undisputed by both parties that on December 21, 2019, an incident took place that involved a carshare vehicle on the landlord's property, and the arrest of both the tenant and her son. The landlord's agents submitted that this was the last incident that they would tolerate due to the history of the tenant and her sons, despite the fact that the landlord has expressed that the behaviour would result in the end of the tenancy. The landlord testified that the complex contains 36 rental units, and the tenant's son would try to enter the property or get the attention of the tenant by throwing objects at the window, or using the intercom. The building manager testified that he had experienced altercations with the tenant's son, and the other residents are also frustrated by the ongoing issues and disturbance. The 1 Month Notice also references smoking inside the rental unit by the tenants, or on the balcony, which has affected other tenants.

The tenant testified that despite the past issues, no recent warning letters have been sent to herself or her son. The tenant testified that on December 21, 2019 she had allowed her son to enter for the purpose of washing the vehicle, and both were arrested after somebody had called the police. The tenant testified that her son was late in

returning the vehicle, and that the police had released both parties without any charges. The tenant testified that she has expressed to her son that he was not to return to the property, and he has not.

The landlord expressed concern that the tenant is in possession of the tenant's dog, which may be cause for the son to return. The tenant testified that she was in fact in possession of the 13 year old dog, which requires her care, and is now her dog.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 46 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 on the grounds provided on the 1 Month Notice.

RTB Policy Guideline #32 speaks to the meaning of "Illegal Activity", and what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the

landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

I have considered the evidentiary materials submitted by the landlord, as well as the testimony in this hearing. As stated above, the burden of proof falls on the landlord to support their claim. In this case the onus is on the landlord to demonstrate that the tenants' behaviour would be considered illegal, and whether this illegal activity is serious enough to warrant the termination of this tenancy.

In this case, although I find it undisputed that an incident did take place which involved the arrest of the tenant and her son, I am not satisfied that the tenant or her son's behaviour could be considered illegal, especially to the extent that warrants the termination of this tenancy on this basis. The tenant testified that both her son and her were temporarily detained, but were released with no charges laid. The tenant testified that her son was simply late in returning the car share vehicle, and someone had called the police to report the presence of the carshare vehicle on the property. I am not satisfied that the landlord has demonstrated that there was any contravention of the law. Accordingly, I am not satisfied that the landlord has met the burden of proof to end this tenancy on the basis of illegal activity.

The landlord is also seeking an end to this tenancy on the basis of the tenants or their sons have put the landlord's property at significant risk. Although I find that the tenants' sons have disturbed the landlord and other residents in the past, I am not satisfied that the tenants or tenants' sons have put the property at significant risk. Although the landlord did submit many letters of complaint, and warning letters sent to the tenant in the past, the documents are not recent. The tenant testified that her son is no longer allowed on the property, and the landlord has not provided any recent letters of complaint to support any further issues other than the December 21, 2019 incident.

For the reasons cited above, I find that the landlord has not met their burden of proof in establishing that they have cause to end this tenancy on the grounds provided on the 1 Month Notice, and accordingly I am allowing the tenants' application for cancellation of the 1 Month Notice dated December 22, 2019. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Conclusion

The landlord's 1 Month Notice dated December 22, 2019 is cancelled and is of no force or effect. This tenancy is to continue 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 27, 2020

Residential Tenancy Branch