



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 an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns about service or receipt of the Notice of hearing.

I have reviewed all evidence and testimony before me that that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence, and issues in this decision.

Preliminary Matters

Preliminary Matter #1

At the start of the hearing the Landlord confirmed receipt of the Tenant’s documentary evidence on January 7, 2020. Although the Tenant confirmed receipt of the Landlord’s documentary evidence sometime in early January, they raised concerns about the way it was received. Although the Tenant stated that it was placed under their door, which is not an acceptable method of service in accordance with section 88 of the *Act*, ultimately

they acknowledged receiving it with enough time to review and respond to it. As a result of the above, and pursuant to section 71 (2) (c) of the *Act*, I advised the parties that I considered the Landlord's documentary evidence sufficiently served on the Tenant for the purposes of the *Act*, and therefore accepted it for consideration in the hearing.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Preliminary Matter #3

At 12:11 P.M. the Landlord disconnected from the teleconference without notice. I checked to ensure that the Tenant was still on the line and that the teleconference was not locked, meaning that the Landlord would be able to rejoin the teleconference if they called back. No substantive matters were discussed after the Landlord disconnected; instead I advised the Tenant that the time scheduled for the hearing had elapsed and that I already had the evidence I required in order to make my decision. As a result, it was unnecessary to accept any further evidence or testimony without the Landlord present. I advised the Tenant that after the conclusion of the hearing I would render my decision in writing regarding the validity of the One Month Notice and whether the tenancy would continue or end and the Tenant provided me with their email address for the purpose of receiving the decision. At 12:17 P.M. the Landlord still had no reconnected to the teleconference and as I already had the evidence and testimony I needed to render my decision, the hearing was concluded.

Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the *Act*?

If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an order of possession pursuant to section 55 (1) of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me names both the Tenant and the Landlord, states that the month-to-month tenancy began February 1, 2016, and that rent in the amount of \$850.00 is due on the first day of each month. The addendum to the tenancy agreement, which was signed by both parties, states that there is to be no smoking and no pets of any kind. In the hearing both parties also agreed that the rental unit in question is a 2-bedroom unit.

The Landlord stated that on January 1, 2020, a One Month Notice was personally served on the Tenant and in the hearing the Tenant acknowledged personally receiving the One Month Notice on that date.

The One Month Notice in the documentary evidence before me, dated January 1, 2020, has an effective date of January 31, 2020, and states the following reasons for ending the Tenancy:

- There are an unreasonable number of occupants in a rental unit;
- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and
- The tenant has assigned or sublet the rental unit without the landlord's written consent.

However, as the Landlord agreed in the hearing that there was no illegal activity and that the Tenant had not sublet the rental unit, the parties only provided evidence and testimony for my consideration in the hearing on the first two grounds for ending the tenancy outlined above.

The Landlord stated that the rental unit was originally rented to the Tenant and one child in 2016, but that they have recently become aware through noise complaints that the

Tenant has three occupants residing with them in the rental unit. The Landlord stated that this is a breach of the tenancy agreement and that although they were aware that the Tenant had two other children at the time the tenancy agreement was signed, they were told by the Tenant that the other two children would only be visiting the rental unit. In support of this testimony the Landlord provided me with a copy of the rental application, the tenancy agreement and addendum, and a shelter information form.

The Tenant agreed that only one child resided with them full-time when the tenancy agreement was signed, however, they stated that they told the Landlord before the agreement was signed that they would be seeking custody of two other children who would then reside with them. The Tenant stated that two other children subsequently moved into the rental unit shortly after the tenancy began in February of 2016 and have been residing in the rental unit since that time. The Tenant stated that the Landlord, as well as other agents for the Landlord and all the occupants of the building are fully aware that the Tenant resides in the rental unit with their three children as the building only has eight units. The Tenant stated that the Landlord simply took no issue with the number of occupants in the rental unit until a new Tenant moved in below them in September of 2019.

The Landlord denied knowing that the Tenant had moved in two additional children and stated that they only became aware of it when the hard of hearing occupant who previously resided in the rental unit below the Tenant vacated that unit and a new occupant moved in on September 15, 2016. The Landlord stated that as soon as the new occupant moved in below the Tenant, a noise complaint was received, which is how they became aware that the Tenant had additional children residing in the rental unit.

The Landlord stated that in total, four noise complaints have been received from the occupant below the Tenant, and that this occupant has threatened to end the tenancy if the noise is not dealt with as they work 13 hour shifts and are continually and unreasonably disturbed by the Tenant and their children. When asked to provide details of the noise, the Landlord characterized it as yelling, running, stomping, and throwing toys. When asked when this noise is occurring, the Landlord stated approximately 7:00 A.M. for several hours at a time.

The Tenant denied that they or their children are causing an unreasonable amount of noise or disturbing another occupant of the building. The Tenant stated that the building is old, that there is hardwood or laminate in many units, and that the sound proofing between units is very poor. The Landlord did not deny or refute the Tenant's statements

with regards to the nature of the building and sound proofing. The Tenant questioned the validity of the complaints being received, stating that to their knowledge the occupant below them leaves for work shortly before them and arrives home first, so it does not make sense that they are working 13-hour shifts. The Tenant also alleged that the occupant may in fact be hearing noise from other units in the building and stated that neither they or their children are causing anything other than a reasonable amount of household noise. The Tenant also stated that they are only aware of two complaints, one on September 15, 2019, and one on January 1, 2020, and that they have only been given one warning from the Landlord about noise, which was received verbally on September 15, 2020.

Finally, the Landlord stated that although the rental unit has two bedrooms, it is far too small to accommodate the Tenant and three children as it is only around 700 square feet. The Tenant denied that the rental unit is only 700 square feet and stated that the bedrooms are very spacious. The Tenant stated that one bedroom contains her bed, two dressers, 2 night stands, and a shoe rack, while the other contains two beds, one of which is a bunk bed, two dressers, several small book shelves, and a small desk. The Landlord acknowledged that these belongings are in the rental unit but stated that it is very cramped as a result and therefore unsuitable. The Tenant acknowledged that the size of the rental unit is not ideal but stated that it is not cramped and that it is not unreasonable to have one adult and three children in a unit of that size.

When asked in the hearing the Landlord acknowledged that they would allow two adults to reside in a one bedroom unit, and stated that although four occupants in a two-bedroom unit may not always be unreasonable, the fact that three of the occupants are children who create a significant amount of noise, makes the number of occupants unreasonable in this specific case.

Analysis

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the landlord must prove the validity of the reasons they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 47 of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit or the tenant or a person permitted on the residential property by the tenant has significantly

interfered with or unreasonably disturbed another occupant or the landlord of the residential property. I will address the second ground for ending the tenancy first.

Although the Landlord stated in the hearing that there have been 4 noise complaints from the occupant below the Tenant since September 2019, and that the occupant of that unit has threatened to give notice if the noise is not dealt with, the Tenant denied that they or any of the occupants of the rental unit, have caused an unreasonable amount of noise. Instead the Tenant stated that the building is old and has poor sound proofing, which is not their fault, and that other occupants of the building believe that the occupant below the Tenant may be being disturbed by noise from a different unit entirely. The Tenant also stated that they are only aware of two noise complaints, one on September 15, 2019, and one on January 1, 2020, and that they have received only one verbal warning about noise on September 15, 2019, and no other verbal or written warnings.

The Landlord has not submitted documentary evidence of the noise complaints or threats to give notice allegedly received from the other occupant of the residential property or called that occupant or any other witnesses to confirm or substantiate the nature and veracity of these noise complaints. The Landlord also acknowledged that no other noise complaints regarding the Tenant's rental unit have been made since the tenancy began in 2016. The Landlord's evidence regarding the number of noise complaints is also inconsistent. In their documentary evidence they only refer to two complaints; one on September 15, 2019, and one on January 1, 2020. However, in the hearing the Landlord stated that there were four complaints. As a result, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property. Having made this finding, I will now assess whether there are an unreasonable number of occupants in the rental unit.

The Landlord's argument that there are an unreasonable number of occupants in the rental unit focused on three things:

- Their belief that the rental unit was rented to only the Tenant and one 9-year-old child;
- The increase in noise caused by additional occupants, specifically two younger children; and
- The size of the rental unit.

I will address the matter of whether the tenancy agreement prohibits additional occupants first.

The Landlord argued that the tenancy agreement was only between themselves and the Tenant and that only one child was authorized as an occupant, however, I note that no occupants are listed on the tenancy agreement or in the addendum to the tenancy agreement. Although the Landlord pointed to a rental application form listing only one minor child in addition to the Tenant as evidence that only one adult and one child were authorized in the rental unit, I find that the tenancy agreement and any applicable addendums, not the rental application, dictates the terms and conditions of the tenancy. In section 17 on page 6 of the tenancy agreement it states the parties should write down any additional terms agreed and although there is an addendum to the tenancy agreement that was signed by both parties, I note that it does not state that additional occupants are not permitted or that the Tenant requires the Landlord's permission to allow additional occupants in the rental unit.

Further to this, the tenancy agreement states under section 11 on page 5, that if the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end tenancy. Based on the above, I find that neither the tenancy agreement nor the addendum explicitly prohibited the Tenant from allowing additional occupants in the rental unit. Rather I find that the tenancy agreement advised the parties that the tenancy could be ended if the number of occupants were unreasonable, which in my mind necessitates an assessment of whether the number of occupants is reasonable, rather than an implicit agreement that additional occupants are unacceptable. I therefore dismiss the Landlord's argument that the Tenant was prohibited, under the tenancy agreement and addendum, from allowing any additional occupants in the rental unit. Having made this finding, I will now assess whether the number of occupants currently in the rental unit is unreasonable due to either the size of the rental unit or the noise created by the number of occupants.

Although the Landlord stated that the unit is only 700 square feet, the Tenant disagreed, stating it is much larger than that. The Landlord did not provide any documentary evidence for my review in support of their testimony that the unit is only 700 square feet. The parties also disagreed about whether the rental unit is suitable for the number of occupants and possessions currently in the rental unit. Although the Landlord stated that the rental unit is very cramped, the Tenant disagreed stating that although it is not ideal, it is not cramped or unreasonably small. The Landlord did not submit any documentary evidence in support of their testimony that the rental unit is cramped, or that any lack of space in the rental unit, should it exist, is anything more than an

inconvenience to the occupants. Further to this, the Landlord acknowledged in the hearing that they would permit two adults in a one-bedroom unit, so I fail to see how 4 occupants in a two-bedroom unit, three of which are children, would be unreasonable. As a result of the above, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the size of the rental unit makes the number of occupants currently residing there unreasonable.

Finally, although the Landlord stated that the number of occupants is unreasonable given their age and the amount of noise created by them; I have already found above that I am not satisfied that the Tenant or occupants are being unreasonably loud. As a result, I find that the Landlord has also failed to satisfy me, on a balance of probabilities, that one adult and four children constitute an unreasonable number of occupants for the two-bedroom rental unit based on noise.

Based on the above I find that the Landlord has failed to satisfy me, on a balance of probabilities, that they had cause to serve the One Month Notice and I therefore order that the One Month Notice is cancelled and of no force or effect. As a result, I order that the tenancy continue until it is ended by one of the parties in accordance with the *Act*.

Conclusion

I Order that the One Month Notice dated January 1, 2020, is cancelled.

I Order that the tenancy continue in full force and effect until it is 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: March 4, 2020

Residential Tenancy Branch