



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, CNL-4M
For the landlord: OPC, FFL

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the Residential Tenancy Act (Act).

The tenant applied for:

- an order cancelling the One Month Notice to End Tenancy for Cause (One Month Notice) issued by the landlord; and
- an order cancelling the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (Four Month Notice) issued by the landlord.

The landlord applied for:

- an order of possession for the rental unit pursuant to a One Month Notice to End Tenancy for Cause (One Month Notice); and
- recovery of the filing fee.

The tenant, the landlord and the landlord's agent/witness attended the teleconference hearing.

The hearing process was explained to the parties, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence

orally and refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The landlord confirmed receiving the tenant's Application for Dispute Resolution; however, the tenant denied receiving the landlord's Application. In response to my inquiry, the landlord said that he served the tenant by registered mail and said it was returned to him, unclaimed.

The landlord submitted a copy of the returned envelope, Canada Post receipt and tracking information. The landlord submitted he used the tenant's address.

In response, the tenant said she does not check her mail regularly. Later in the hearing, the tenant said that she never checks her mail.

I find that the landlord complied with his obligation under section 89 of the Act in serving his hearing documents by registered mail. I therefore find the tenant was sufficiently served the landlord's application and hearing documents.

On another matter, at the beginning of the hearing, I informed the parties about the conduct of the hearing and the expectations of the parties during the hearing. I specifically informed the parties to not interrupt anyone else and to write down any comments or responses they wished to make, for later reference.

Almost immediately and throughout the hearing, despite many cautions, the tenant continuously interrupted and talked over me and the other parties, shouted at me and the other party, called the landlord names, and was generally very aggressive.

When I attempted to discuss the tenant's evidence, specifically when I informed her that her evidence was not submitted in an organized manner as required by the Rules, the tenant became aggressive towards me.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's One Month Notice and Four Month Notice?

Is the landlord entitled to an order of possession of the rental unit as a result of serving the tenant a One Month Notice?

Background and Evidence

The undisputed evidence is that this tenancy began between this tenant and another landlord on or about August 1, 2018 and that the beginning and current monthly rent is \$595.

The landlord here purchased the residential property and took possession on December 9, 2019.

The landlord issued the tenant two Notices, as described above. The matter of the One Month Notice was considered first in the hearing.

Both parties provided a copy of the Notice, which shows that it was dated on January 17, 2020, for an effective date of February 17, 2020. The undisputed evidence was that the Notice was served to the tenant by attaching it to the tenant's door on January 17, 2020. The tenant's application was made on January 25, 2020, within the required timeline.

The reasons stated on the Notice to end tenancy were:

That the tenant or a 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 on another occupant or the landlord; and
- put the landlord's property at significant risk.

The landlord and agent provided the following testimony and references to their documentary evidence:

The landlord said he had received numerous complaints by the tenant in the adjoining rental unit about the excessive noise by the tenant. Specifically, that tenant, DS, said that the tenant had her music and television on at loud levels, which extended into the late hours and early mornings. The landlord said that DS informed him that his two daughters could not sleep in their room due to the noise.

Other noises addressed to the landlord by DS were the barking dogs of the tenant, and when DS banged on the walls to quieten the tenant, she started banging back and turned her music up louder.

In response to my inquiry, the landlord said that he addressed these complaints with the tenant on several occasions, and he was met with hostility and belligerence, according to the landlord. The landlord submitted that the tenant called him a liar and came after him physically.

The landlord also submitted that the rental unit was unsanitary and is a potential fire hazard, due to the clutter in the rental unit. The landlord said there is rotting food all around the rental unit and the smell is like compost. The landlord said that he will not go into the rental unit without a respirator and personal protective gear on.

The landlord described the tenant as a hoarder.

The landlord said all the debris and clutter makes the rental unit a fire hazard.

The landlord submitted that DS has complained about the smells coming from next door, and the landlord and the landlord's agent both confirmed that they have smelled the compost-like odor coming from the tenant's rental unit.

The landlord said that he has offered numerous times to help the tenant clean the rental unit, but was refused.

The landlord's relevant evidence included photographs of the state of the rental unit, texts from DS, a letter from the landlord to the tenant requesting that she clean the rental unit for an inspection, and requests from the landlord to the tenant that she clean her rental unit.

The tenant provided the following testimony in response to the landlord's application and evidence:

The tenant said she has had problems with DS before this landlord took over the property.

The tenant said she was packing up to move out when the landlord took over, but due to her asthma and the winter months, she was unable to do so.

The tenant denied that she had the ability to play music loudly, as she does not have a television and listens to music quietly. The tenant said she only has two small speakers.

The tenant said that the photos she provided into evidence show that her rental unit is clean.

The tenant said that she had advocates representing her, that they called the landlord, but he would not return their calls.

Landlord's rebuttal-

The landlord said he never received any calls from the tenant's advocates, but instead, he tried to contact them, without success.

The landlord said that he told the tenant to call him when the unit was clean, so there could be an inspection; however, he has not received that phone call.

Landlord's agent's testimony -

The landlord's agent said that she was personal friends with DS, and as such, she confirmed that she smelled the foul odors coming from the tenant's rental unit, through the walls.

Analysis

Upon review of the One Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenants in a manner that complies with section 89 of the Act.

Section 47(1)(d)(i) of the Act authorizes a landlord to end a tenancy if 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.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Section 28 of the Act states that all tenants are entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The landlord said the tenant was making excessive noises in her rental unit which impacted the quiet enjoyment of the adjoining tenant and his children and as result, he addressed these concerns with the tenant.

The landlord submitted further that a smell resembling compost entered the adjoining tenant's unit came from the tenant's rental unit. This was confirmed by the landlord's witness, when she visited the adjoining rental unit.

The landlord said that the tenant became confrontational, belligerent and aggressive when he attempted to speak with the tenant about the level of noise. Further, the landlord submitted that the tenant did not correct her behaviour.

The tenant denied making any such excessive noises and suggested she was incapable of such as she watched programming on her computer, with only two speakers.

In assessing the credibility of the parties, I considered their conduct in the hearing.

The tenant's conduct at the hearing was also confrontational, inappropriate, and aggressive. The tenant was argumentative and conducted herself in an agitated manner. I cautioned the tenant throughout the hearing, and her inappropriate behaviour continued. At one point, the landlord mispronounced the tenant's surname, and the

tenant began shouting over the landlord and refused to participate further; however, she did continue.

The tenant continually interrupted the landlord's testimony and the undersigned arbitrator, shouting disagreements throughout the hearing.

I favored the landlord's submissions as they were forthright, credible, consistent, and supported by witness testimony and documentary evidence.

On the whole, I find the tenant's conduct confirmed the landlord's testimony of the tenant's behaviour in their dealings.

Given that I find the landlord's testimony to be credible, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant or a person permitted on the residential property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

As I have found the landlord has proven at least one of the causes he listed, it was not necessary to consider the other listed causes.

Tenant's application –

I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the One Month Notice valid, supported by the evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective two (2) days after service on the tenant.

In the event that the tenant does not comply with this Order, it may be filed with the Supreme Court and enforced as an Order of that Court.

Although I have ordered the tenancy will end pursuant to section 47 and 55 of the Act. I find the order of possession cannot be enforced until such time as the ORDER OF THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL, Emergency Program Act, Ministerial Order No. M089, expires or is cancelled.

As I have granted the landlord an order of possession of the rental unit pursuant to the One Month Notice, I did not consider whether the Four Month Notice was valid as the request of the tenant was moot. That portion of the tenant's application seeking cancellation of the Four Month Notice is dismissed.

Landlord's application-

As I have cancelled the tenant's application and granted the landlord an order of possession of the rental unit based upon his One Month Notice, I find that it was not necessary to consider his application.

In the instance of a tenant applying to dispute a landlord's Notice to end a tenancy, it is not necessary for a landlord to file their own application to enforce the Notice. The reason for this is that if the landlord has submitted sufficient evidence, the Notice will be upheld and they will be granted an order of possession of the rental unit. On the contrary, the landlord submits insufficient evidence, the Notice will be cancelled.

Although, in essence, I have granted the landlord the relief sought in his application, I do not grant him recovery of his filing fee.

Conclusion

For the reasons stated above, I dismiss the tenant's application, without leave to reapply.

For the reasons stated above, I, in effect, grant the landlord's application seeking enforcement of the One Month Notice.

The landlord has been issued an order of possession for the rental unit, effective 2 days after service on the tenant.

The landlord has not been granted recovery of his filing fee.

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 31, 2020

Residential Tenancy Branch