



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's request pursuant to the Residential Tenancy Act (the Act) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), issued pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord EP and witness LT and tenant AH attended the hearing. Each were given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present, I confirmed that there were no issues with service of the tenant's Application for dispute resolution and evidence (the Materials). The landlord and witness LT confirmed receipt of the tenant's Materials. In accordance with sections 88 and 89 of the Act, I find the landlord was duly served with the Materials.

Preliminary issue – Service of the Landlord's Evidence

The landlord affirmed his evidence was not served on the tenant. The landlord's evidence documents are excluded per section 3.15 of the Rules of Procedure.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. Is the tenant entitled to recover the filing fee?
3. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started in September 2015. Rent is \$880.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$400.00 was collected and the landlord still holds it in trust. The tenant continues to reside at the rental property.

The landlord affirmed the Notice was posted on the tenant's mailbox on January 27, 2020. The tenant affirmed she received the Notice on January 30, 2020.

A copy of the Notice was provided. The Notice is dated January 27, 2020 and the effective date is February 29, 2020. The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- 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 the other occupant.

The details of cause specify: "See attached documents." However, no documents are attached.

The landlord affirmed there are two rental units in his rental property. Tenant AH lives in the lower unit, and witness LT lives in the upper unit. The landlord was vague and did not know details of what is happening in his rental property. The landlord affirmed tenant AH had conflicts with the previous upper unit tenant.

The landlord's witness LT affirmed AH changed the lock of a shed that belongs to her unit and refused to allow LT to access her shed. AH denied this.

LT affirmed AH removed her planter pots from the garden and put her planter pots on the same place. AH affirmed she did not remove LT's planter pots and LT torn up her planter pots.

LT affirmed AH has a cleaning business and she brings home garbage from her business. AH puts her garbage and recycle in the garbage and recycle bins that belongs to LT and this is causing her bins to be full. AH denied this.

LT affirmed AH is parking her car in front of the rental units entrance and is blocking both unit's entrance. In one occasion, after AH was asked and refused to remove her car, LT referred to her as 'bitch'. AH affirmed she always parks her car in the appropriate parking spot and that she only responds to the verbal aggressions she suffers from LT. AH also affirmed LT has made obscene gestures to her.

LT affirmed AH leaves her rental unit unlocked with the door opened and this is a safety issue because a trespasser can invade AH's unit and from there easily reach LT's unit. LT feels vulnerable because she lives alone. AH affirmed she has many windows in her rental unit and none of them have locks. During the summer AH keeps her windows opened. From AH's rental unit it is not possible to reach LT's unit.

LT affirmed this winter AH's cat was outside during three consecutive days and LT fed her cat. AH affirmed she loves her cat and takes very good care of him. When AH is not at home her mother takes care of her cat.

Tenant AH submitted into evidence a letter dated October 10. In this letter, addressed to LT, she states: "Please also respect my privacy and refrain from looking into my windows – likely said you did also. I've already contacted both the SPCA & the cops to notify them of this situation. Again, appreciate your concern but I am taking care of my pet even if I am not here."

LT affirmed since last summer AH has been living with her boyfriend and only goes to her rental unit periodically. AH affirmed she is in her rental unit almost every day.

AH affirmed the landlord is breaching her privacy by providing information about herself to LT. AH also affirmed LT can never have a conversation, she is always threatening and acting in a belligerent way and does not respect her property.

AH's verbal testimony is in accordance to a written statement submitted into evidence.

Analysis

A tenant may dispute a notice to end tenancy for cause pursuant to section 47(4) of the Act. The tenant was served the Notice on January 30, 2020 and filed this application on Monday, February 10, 2020. As the tenth day to dispute the Notice was Sunday, February 09, 2020, and the tenant filed this application in person on Monday, February 10, 2020, I find the tenant disputed it within the time frame of section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, both parties have provided conflicting testimony regarding several issues between tenant AH and witness LT, whom is a tenant at the same rental property. Every affirmation of witness LT was denied by tenant AH. There was no evidence of the tenant, or someone the tenant had permitted on property, has engaged in illegal activity. The landlord was vague and did not provide any details to prove the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I find the landlord has failed to prove, on a balance of probabilities, the grounds of the Notice. Furthermore, the Notice submitted into evidence indicates on the section details of cause: "See attached documents." There are no attached documents to the Notice. I find the Notice does not state properly the grounds for ending tenancy (Section 52(d) of the Act).

Accordingly, the Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

As the tenant has been successful, I find she is entitled to recover the \$100.00 filing fee paid to make an application, pursuant to section 72 of the Act. I order that this amount may be deducted from the next rent payment.

Conclusion

The One Month Notice dated January 27, 2020 is canceled and of no force or effect.

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: April 02, 2020

Residential Tenancy Branch