



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNDCT, RP, RR, LAT, LRE**

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;
- A monetary award for damages and loss pursuant to section 67;
- An order for repairs pursuant to section 33;
- An order reducing the rent pursuant to section 65; and
- An order restricting the landlord's right to enter the rental unit and change the locks to the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were assisted by a family member.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the materials. Based on the testimonies I find each party was served with the respective materials in accordance with the *Act*.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application must be related to each other and the Arbitrator may dismiss unrelated disputed with or without leave to reapply. In the present case, I find that the tenants have applied for a lengthy list of relief which is unrelated to the central issue to dispute the 1 Month Notice to End Tenancy. Therefore, I dismiss all but the portion of the tenant's application to dispute the 1 Month Notice with leave to reapply.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy began on February 1, 2020. The rental unit is a basement suite in a detached home with the landlords occupying the other portion of the building. Monthly rent is \$1,700.00 payable on the first of each month.

The landlords issued a 1 Month Notice dated February 10, 2020 stating the reasons for the tenancy to end as:

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 of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*

In addition to the present application the landlords have earlier applied for an early end of tenancy under the file number on the first page of this decision.

The landlords gave lengthy evidence on how they feel that they are terrorized by the tenants who have taken video recordings, complained about noise, refused entry to the rental unit to make repairs, have made disparaging comments to the landlords and smoke in and around the rental property in contravention of the tenancy agreement. The landlords submitted written statements and video evidence in support of their testimonies. The landlords further state that the tenants have complained about the condition of the rental unit when first taking possession of the suite but have subsequently interfered with any attempts at maintenance or repairs causing ongoing damage to the suite.

The landlords submit that the tenants have made consistent complaints about noise and the landlords' behaviour which they believe to be racially motivated and a systematic attack on their ability to quietly enjoy their own home. The landlords submit that the correspondence from the tenants constitute harassment and that they are now living in fear of the tenants. The landlords said that the tenants have unreasonably attempted to prevent the landlords from using the common property by making requests and subsequently taping off areas so that the landlords cannot encroach onto some common areas.

The landlords believe that the tenant's refusal to allow the landlords entry into the rental unit for the purpose of inspection means that they are likely causing damage to the suite. The landlords have made several complaints about the tenants to the local police and have received a police file number.

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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The 1 Month Notice was posted on the rental unit door on February 10, 2020. As such, pursuant to section 90 of the *Act* I find that the notice is deemed served on the tenants on February 13, 2020, three days after posting. The tenants filed their application to dispute the notice on February 21, 2020, within the ten days provided under the *Act*.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that there has been significant interference or unreasonable disturbance of the landlord, a serious jeopardy to the health or safety or lawful right of the landlord, or have put the property at significant risk or have engaged in illegal activity that has or is likely to damage the landlord's property.

I find that the landlord has not met their evidentiary burden on a balance of probabilities. The reasons provided by the landlord for this tenancy to end consists of subjective

complaints, accusations and general grumblings which I find do not constitute anything close to an unreasonable disturbance or infringement on the lawful right of the landlord.

I find there is little evidence of any damage to the property or that the property is placed at any risk due to the actions of the tenants. I do not find the initial request for repairs to be indicative that the tenants have caused or are likely to exacerbate damages to the suite. In accordance with section 8 of *Ministerial Order M089* the landlord's right to enter a rental unit under the *Act* is suspended except in specific instances as allowed under the Order.

The quoted remarks the landlord says were made by the tenants may be unpleasant but cannot reasonably be construed to be a threat or significant. I find the landlord's citing of these minor comments to be indicative of their unreasonable belief as to what would give rise to cause to end a tenancy. I find little evidence in support of the landlord's belief that there is any racial bias as motivation for the tenants' actions or comments. I find that the landlord's attempts to attribute a motivation to the tenants and linking their current conflict to recent news items about criminal events to be exploitative and not at all supported in the materials. I find little evidence that there is any serious jeopardy or danger to health and safety posed by the tenants.

Based on the evidence submitted, I do not find the correspondence and written communication between the parties to be an unreasonable disturbance. The series of correspondence by the tenants cites the *Act* and points to various issues they feel are in need of being addressed and proposals for resolution. While the landlords may disagree with the tenant's requests or proposals that does not relegate these correspondences to be an unreasonable disturbance.

I find the instances of recording on the property by both parties to be insufficient to be construed to be an unreasonable disturbance or the lawful rights of others. Based on the testimonies of the parties and evidence I do not find the instances of recording to have been significant or anything more than a momentary nuisance. Similarly, I find the instance where the tenants cordoned some areas of the common property to be a minor issue that was easily remedied. I do not find that the events as described to be significant or a serious interference.

I find that both individually and cumulatively the landlords have not shown sufficient evidence to support their issuance of the 1 Month Notice. I find that the evidence of the landlords to be a series of complaints and magnifying of minor issues. While the landlords may believe these events, actions and comments to be so significant that they

ought to give rise to a basis to end the tenancy, I do not find the evidence supports their position. Based on the evidence before me I find that the conduct of the tenants to not be serious or at a level that gives rise to a cause for the tenancy to end.

I do not find that the landlords have provided sufficient evidence to meet the burden of proof that the tenants' actions have given rise to cause to end this tenancy. Consequently, I dismiss the landlords' 1 Month Notice.

Conclusion

The tenants' application to cancel the 1 Month Notice is successful. This tenancy continues until ended in accordance with the Act.

The balance of the tenants' application is severed and dismissed with leave to reapply.

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 24, 2020

Residential Tenancy Branch