



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

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 landlord was represented by their agent.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials. Based on the testimonies I find each party was duly served with the respective materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the parties agreed that the names of the respondents were incorrectly provided on the application and they were corrected. The style of cause represents the corrected names of the parties.

The tenant withdrew the portion of their application seeking to cancel a 10 Day Notice.

Issue(s) to be Decided

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

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

This periodic tenancy began in January 2017. The current monthly rent is \$755.00 payable on the first of each month. The rental unit is a suite in a multi-unit building with 8 units.

The landlord submits that the tenant has caused unreasonable disturbance to the other occupants of the building by making excessive noise at all hours. The landlord has issued warning letters to the tenants dated December 8, 2019, January 11, 2020 and March 1, 2020 informing them of the noise complaints and the consequences should they fail to amend their behaviour. The noise includes playing music, slamming doors, and hosting guests who engage in loud behaviour. The landlord gave evidence that when other occupants or the landlord's agents request the noise level be decreased the tenants and their guests have reacted in a vulgar manner. The landlord gave evidence that the police have been called on a number of occasions regarding the tenant and their guests.

The landlord had previously issued a 1 Month Notice dated November 24, 2019 for the same reasons as the present notice but withdrew it upon coming to an agreement with the tenant that they would control their noise level. The landlord says that despite the agreement the tenants have immediately resumed their activities that disturb and interfere with the other occupants.

The landlord issued the present 1 Month Notice dated March 21, 2020 indicating the reason for the tenancy to end is that 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 or the landlord.

The tenant gave evidence that they have engaged in activities that has caused disturbance to others but that they are attempting to rectify their behaviour. The tenant explained that it has been a stressful time recently that has led to some of the noise complaints. The tenant blamed some of the complaints on the behaviour of their

guests. The tenants submits that while police have attended on a number of occasions no charges have been laid and they have not engaged in illegal activities.

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.

In the present case the landlord must show that 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 or the landlord. While I find that the landlord has provided sufficient evidence to demonstrate that there has been an adverse effect on the quiet enjoyment of the other occupants of the rental unit, I do not find sufficient evidence that this was a result of any illegal activity on the part of the tenant.

The landlord explained that they are aware that there has been no illegal activity on the part of the tenant but the standard 1 Month Notice form provided by the Branch does not have another box to check that they felt reflected the disturbance caused by the tenant. I do not find the explanation to be reasonable under the circumstances. The standard 1 Month Notice form provides that a landlord may end a tenancy when a tenant significantly interferes with or unreasonably disturbs another occupant and the landlord could have indicated this as the reason for the tenancy to end.

I find that the landlord has not shown that there is a basis for this tenancy to end for the reason indicated on the 1 Month Notice. While I accept that the tenant has engaged in behaviour and conduct that has disturbed the other occupants of the rental building, I find there is little evidence that there is illegal activity that gives rise to the disturbance. Consequently, I allow the tenant's application to cancel the 1 Month Notice. This tenancy continues until ended in accordance with the *Act*.

As the tenant was successful in their application they are entitled to recover their filing fee from the landlord. As this tenancy is continuing the tenant may satisfy their monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant's application is allowed. The 1 Month Notice of March 21, 2020 is cancelled and of no further force or effect.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: May 1, 2020

Residential Tenancy Branch