



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ET, FF

Introduction

At the outset of the hearing the parties request that the tenant's application scheduled to be heard on August 6, 2020, be joined to be heard with the landlord's application. I find that request reasonable as they landlord's application for order of possession is directly related to the tenant's application to cancel a notice to end tenancy

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. To end the tenancy and obtain an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a One Month Notice to End Tenancy for cause (the "Notice") issued on June 26, 2020; and
2. To have the landlords comply with the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The tenant indicated they were unable to open one of the audio's file; however, they have heard the recording earlier.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary and Procedural matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy. The balance of the tenant's application is dismissed, with leave to reapply.

In this case the parties were at a hearing on June 2, 2020, where the landlord was seeking to end the tenancy. The landlord's application was dismissed due to insufficient evidence. The evidence heard at the hearing was related to a tampering with a heating system. The Arbitrator determined that was not grounds to end the tenancy pursuant to section 56 of the Act. This did not take away the landlord's rights to issue a notice to end tenancy pursuant section 47 of the Act.

Issues to be Decided

Should the Notice, be cancelled?

Are the landlords entitled to an order of possession?

Background and Evidence

The tenancy began September 2019. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenant paid a security deposit of \$550.00. Not pet damage deposit was paid.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 1, 2020.

The reason stated in the Notice was that 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 and
- put the landlord's property at significant risk
- The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property;
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the tenant and another tenant have been involved in harassing another occupant. The landlord stated that the other renter was seen and recorded sneaking on the occupant's deck and removing the hose to the washing machine and stealing some other items. The landlord stated that the other renter was evicted and has vacated the premises. However, the tenant is allowing this person on to the property as their guest.

The landlord testified that although this tenant is not seen on video there are clearly more people involved. The landlord stated that the other renter admitted that they were both involved in the theft, and they were informed that this tenant was the master mind behind the theft, which was recorded. Filed in evidence is a recording where the other tenant stated that this tenant was also involved in the theft and was upset because the tenant had not also been evicted.

The landlord testified that on June 5, 2020, the tenant and their guest were again involved in acts of mischief.

The landlord testified that on June 5, 2020 the tenant tampered with the sensor light over the garage by disabling it; however, they were still captured at 12:01 am on video with their guest removing wet furniture and garbage from the roadside back on to the property.

The landlord stated that it was then at 2:24am on the same day that the tenant and their guest were at the front door of the occupant's resident attempting to disable their exterior light fixture. The landlord stated that the video shows the tenant was attempting to unscrew the screws in the light fixture. The landlord stated that the tenant was also playing their music from their vehicle loud causing a disturbance.

The landlord testified that the tenant and their guest are purposely harassing the other occupant and the other occupant does not feel safe and has indicated they will vacate the property if the tenant is not evicted.

The tenant testified that on June 5, 2020 they had just got home from work and was picking up their mail. The tenant stated they would have not been seen moving the furniture onto the property if it was not for the cameras. The tenant stated that they moved the furniture of the previous tenant because the landlord was not happy that it was left at the curbside.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept the evidence of the landlord that the tenant is involved in harassing the other occupant and is significantly interfering with the landlord's lawful right to provide safe and secure housing for this occupant.

Although the other renter has been evicted and was the one seen on the video stealing the hose from the occupant's washing machine and other items for their deck, there were more people involved. This previous renter informed the landlord that the tenant subject to this hearing was involved in the plan which an audio recording of that conversation was submitted as evidence. I find the tenant's actions significantly interfered with the other occupant lawful rights when they were involved with planning a stealing item from the other occupant's patio.

Further, I do not accept the evidence of the tenant that on June 5, 2020, they had just got home at 2:24am from work and were simply retrieving their mail. I find their evidence to be untruthful and is not supported by the videos or their own testimony.

The tenant and their guest were at the property at 12:01 on June 5, 2020, removing furniture from the road side on to the property, which was captured on the video. This

was admitted by the tenant. I find it more likely than not that the garage sensor light was disabled by the tenant or their guest to avoid detection by the camera. This is supported by the tenant attempting to disengage the occupant's porch light, which I will refer to later in this decision. I find the tenant did significant interfere with the landlord's lawful right when they disengaged the sensor light, that is there for-safety purposes and when they returned the previous tenant's furniture back to the property. This was not the tenant's furniture and had no right to get involved in issues of other tenancies.

Further, the video of June 5, 2020, shows that there was loud music playing from a vehicle of the tenant's or their guest causing an unreasonable disturbance. The portion of the video which I find troubling shows that the tenant was attempting to remove screws from the light fixture from the occupant's porch at 2:24am, giggling and looking back at their friend. At the end of the video when the tenant is no longer on camera you can hear the tenant state to their friend that the light fixture was screwed in. Although the tenants attempt to disable the light fixture was unsuccessful the tenant was conducting an act of mischief, I do not accept the tenant was on the porch of the other occupant for a legal purpose, such as simply retrieving their mail.

While I accept the tenant did grab something from the mailbox; however, this was after they attempted to unscrew the light fixture. I find this was clearly for appearance sake only as they knew they were on camera at this point, this was done in a very dramatic way, which as they pulled a piece of mail from the box the tenant stated in a loud voice "look it's for me" waving the envelope in the air to ensure they were captured on the video. This was unnecessary and simply an attempt to cover their original intentions of tampering with the exterior light fixture.

Based on the above, I find the Notice issued on June 26, 2020, has been proven by the landlord and is valid and enforceable.

Therefore, I grant the landlords' an order of possession. and I dismiss the tenant's application to cancel the Notice.

The tenancy will end on August 1, 2020 in accordance with the Act, this is the effective date of vacancy in the Notice. This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Since I have granted the landlords' application for an order of possession, I find the landlord is entitled to recover the cost of their filing fee from the tenant. Therefore, I

grant the landlords a monetary order in the amount of **\$100.00** and the landlord is authorized to deduct that amount from the tenant's security deposit in full satisfaction of this award.

Conclusion

The tenants' application to cancel the Notice is dismissed. The landlord is granted an order of possession. I grant the landlord a monetary order for the cost of filing their application and the landlord is authorized to deduct that amount from the tenant's security deposit in full satisfaction of this award.

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: July 17, 2020

Residential Tenancy Branch