



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on June 27, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a one month notice for cause;
- an order that the Landlord comply with the Act; and
- a monetary order for damage or compensation.

The Tenant, the Landlord, and the Landlord's Counsel G.P., attended the hearing at the appointed date and time. The parties acknowledged receipt of their respective Application and document evidence packages. The Tenant stated that she had difficulties opening one of the Landlord's digital evidence files. The Landlord stated that she offered to assist the Tenant in viewing the digital evidence file by either providing her with a device capable of opening the file, or else suggested to the Tenant to attend the library to make use of a device with greater capabilities.

In this case, I find that the Landlord has provided sufficient evidence to demonstrate that she made a reasonable effort to ensure that the Tenant would be able to review the Landlord's evidence prior to the hearing. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an

Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the notice to end tenancy for cause. The Tenant's request for an order that the Landlord comply with the Act, and a monetary order for compensation are dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated June 27, 2020, pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on August 1, 2018. Currently, the Tenant is required to pay rent in the amount of \$875.00 to the Landlord which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$425.00 which the Landlord continues to hold. Both parties provided a copy of the tenancy agreement in support.

The Landlord stated that she is seeking to end the tenancy in relation to several ongoing concerns. The Landlord stated that the Tenant has almost daily communications with the Landlord which typically consist of the Tenant expressing her

concerns regarding the neighbouring occupant making noise. The Landlord stated that the Tenant also inquires about collecting her mail. The Landlord stated that the Tenant is sensitive to noise and that the Landlord has taken action to mitigate the noise transfer between the two rental units, such as, installing new insulation in an attempt to mitigate the noise transfer. The Landlord stated that despite her efforts, the Tenant continues to express her displeasures to the Landlord and has been banging on the wall and engaging with the other occupant which has caused conflict in the rental property.

The Landlord also indicated that one of the Tenant's guests notified the Landlord that the Tenant has been smoking marijuana in her rental unit. The Landlord also noted that the smoke alarm in the rental unit had been disconnected which are safety concerns.

For the above mentioned reasons, the Landlord stated that she served the Tenant in person with the One Month Notice on June 27, 2020 with an effective vacancy date of July 31, 2020. The Tenant confirmed having received the One Month Notice. The Landlord's reasons for ending the tenancy on the One Month Notice 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.

The Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health and safety or lawful right of another occupant or the Landlord.

The Tenant has made an Application to cancel the One Month Notice. The Tenant stated that she feels as though her complaints to the Landlord have merit and that she is concerned regarding the safety of the children who reside in neighbouring rental unit as she has overheard abusive statements from the adult occupant. The Tenant stated that she has also called the Police in relation to these concerns. The Tenant stated that despite the Landlord's efforts, she continues to feel as though her quiet enjoyment of the rental unit has been impacted as noise is frequent.

The Tenant denied smoking in her rental unit and stated that she was not the one who disconnected the smoke alarm in her rental unit. The Tenant stated that the smoke alarm is currently connected. The Landlord confirmed during the hearing that she can hear the neighbouring occupant making noise at times which she said she addresses

immediately. The Landlord stated that she has not attended the rental unit to inspect the smoke alarm since her initial observation of it being disconnected.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause on June 27, 2020 with an effective vacancy date of July 31, 2020. The Tenant confirmed having received the notice. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I accept that the Tenant has been in consistent contact with the Landlord regarding concerns about loud noises coming from the neighbouring occupants. While the Landlord stated that the frequency of the complaints has become an issue, I find that it does not prevent the Tenant from reporting further concerns to the Landlord.

I accept that the Landlord acknowledged that the occupants have made noise in the past and that the Landlord has taken action to mitigate the noise transfer between the units. I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant expressing her concerns to the Landlord has significantly interfered with or unreasonably disturbed another occupant or the Landlord to the extent that the tenancy should end.

Nevertheless, the Tenant is now warned that communication with Landlord should be reasonable, respectful, and reserved for genuine matters that require Landlord intervention. Increased incidents of this type or any further escalation, may give the Landlord sufficient cause to end the tenancy.

The Landlord has also claimed that the Tenant has smoked in the rental unit and disconnected the smoke alarm. The Tenant denied the Landlord's claims. I find the Landlord has provided insufficient evidence to support the Tenant took part in the above-mentioned activities.

In light of the above, I cancel the One Month Notice, dated June 27, 2020. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated June 27, 2020 is cancelled. The tenancy will continue until ended in accordance with the Act.

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 24, 2020

Residential Tenancy Branch