



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Locke Property Management Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, MNDCT, OLC**

Introduction

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

- Cancellation of a 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; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

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 corporate landlord was represented by their agents.

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

During the hearing the tenants withdrew the portion of their application seeking a monetary award with the consent of the landlord.

Issue(s) to be Decided

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

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

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.

The parties agree on the following facts. This periodic tenancy began in May, 2018. The current monthly rent is \$922.00 payable on the first of each month. The rental unit is a suite in a multi-unit building with adjoining outdoor areas.

The landlord issued a 1 Month Notice dated August 7, 2020. The reasons provided on the notice for the tenancy to end are:

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;*

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;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord provides further details of the cause stating that there have been multiple complaints about the behaviour of the tenants. The landlord submits that other occupants of the rental property have complained that the tenants have yelled at them for smoking and have caused noise in their rental unit. The landlord submitted into documentary evidence a copy of the complaint letter from the other occupant dated August 4, 2020 and correspondence issued by the landlord regarding the complaint. The landlord submitted other correspondence of complaints regarding the tenants issued after the date of the 1 Month Notice. The landlord submits that they have received complaints about the level and frequency of noise by the tenants as well as complaints about odour and suspicions of growing marijuana on the rental property.

The landlord says that a material term of the tenancy is that the tenants must not disturb other occupants of the rental property. The landlord submits that the issuance of complaints by other occupants and the fact that another occupant has gone so far as to call the police to be evidence that the tenants have breached this term of the tenancy agreement.

The tenants dispute the landlord's characterization of their behaviour. The tenants submit that they have complained, both to the landlord and directly to other occupants of the rental building, about their smoking and second-hand smoke wafting into the rental unit. The tenant further submits that their level of noise is no more than what would reasonably be expected from a family residence. The tenant concedes that there have been some heated altercations with some of the other occupants but submits that fault for the incidents is equally attributable to the other occupant and that they have done their best to deescalate any situations.

The tenants testified that they have made complaints to the landlord regarding the conduct of the other occupants and feel the landlord has not taken reasonable steps to ensure their right to quiet enjoyment of the rental unit.

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 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 the tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health or safety or lawful right of another occupant, that the tenants have engaged in illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or jeopardized a lawful right of another occupant, or that the tenant has breached a material term of the tenancy agreement.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. While it is clear from the evidence submitted that some conflict

arose due to a clash between the tenants and other occupants of the building, I do not find sufficient evidence to conclude that the behaviour of the tenant created an unreasonable disturbance of the other residents such that it forms the basis for a tenancy to end.

The landlord's documentary evidence consists of a few letters of complaint issued by other occupants. I find that the vague nature of the noise complaints, and the fact that much of the other allegations of odour from the rental unit and suspicions of growing marijuana are not supported in the documentary evidence or the observations of the landlord's agents, leads me to give the complaint letter little weight. I find that much of the other letters of complaint are dated after the issuance of the 1 Month Notice and find little evidence that the tenant's conduct has caused unreasonable disturbance of others leading to the issuance of the notice to end tenancy.

Based on the totality of the evidence, I find that it is more likely that the tenants cause some sound and noise through their daily activities, as anyone would. I find that due to the design of the rental property sound and smoke travels more easily between rental units. While I accept that there may be some discomfort and inconvenience caused by the sounds created by the tenants, there is no evidence before me that it is of such magnitude that it would be characterized as an unreasonable interference.

Furthermore, I find little evidence in support of the landlord's characterization of the disputes between tenants as one that poses a serious jeopardy to the health, safety or lawful rights of others. I find that one instance of heated words and some soil being tossed to be insufficient to conclude that there is a serious risk posed by the tenants.

The burden of proof rests with the landlord to show that the behaviour of the tenant was such that it transcended the ordinary level expected from a reasonable neighbor. I find that there is insufficient evidence in support of the landlord's position. I find that the letters of complaint included in the documentary evidence to consist of subjective observations which arise from a scant few recent instances. I do not find that the involvement of police to be particularly persuasive as anyone is able to call and have police attend regardless of the underlying merits of any complaint. I do not find the letters of complaint to demonstrate that the conduct of the tenants has been so beyond the ken of a reasonable occupant that it gives rise to an end of the tenancy. I further note that I find little evidence that there has been a breach of any portion of the tenancy agreement pertaining to conduct.

I do not find that individually or cumulatively the tenants' actions have given rise to cause to end this tenancy. Accordingly, I allow their application and cancel the 1 Month Notice of August 7, 2020.

While the tenant complains about the noise level of the other occupants and their smoking on the rental property, I find insufficient evidence that there has been a breach of the Act, regulations or tenancy agreement on the part of the landlord such that an order of compliance is appropriate.

I find it sufficient at this time to remind that parties that pursuant to section 28 of the Act a landlord has an obligation to ensure that a tenant's entitlement to quiet enjoyment is protected. I note that this duty on the part of the landlord does not necessitate they terminate any tenancy upon receipt of a complaint. I accept the submissions of the parties that these past months have been a particularly stressful time for many individuals increasing their time spent at home due to Covid restrictions. I would urge parties to attempt to resolve any further disputes through dialogue prior to filing additional applications.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause dated August 7, 2020 is successful. The notice is cancelled and of no further force or effect. This tenancy continues 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: September 29, 2020

Residential Tenancy Branch