



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP
 OPC, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end the tenancy for cause and for an order that the landlord make repairs to the rental unit or property.

The landlord and one of the tenants attended the hearing and each gave affirmed testimony and provided evidentiary material in advance of the hearing. The tenant was also assisted by an Advocate who also gave affirmed testimony. The parties were given the opportunity to question each other and the Advocate, and to make submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing I advised the parties that the Rules of Procedure specify that multiple applications must be related. In this case, the primary purpose of this hearing is with respect to a notice to end the tenancy, and I dismiss the tenants' application for an order that the landlord make repairs, with leave to reapply.

Issues to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause or End of Employment was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began on January 1, 2018 and the tenants still reside in the rental unit. Rent in the amount of \$1,250.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$625.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord and family reside in the upper level of the home. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that he and his ex-wife share custody, one week at a time, of their 9 year old daughter, and Court orders are in place to that effect. On July 15, 2020 the landlord received a call from his ex-wife stating that the daughter told her that the tenants' child had inappropriately touched the daughter, and that the children had been viewing inappropriate websites on a cell phone or other similar device. The landlord did not act without getting information and contacted the tenant about it, and the boy admitted doing it. That evening, the landlord received an email from his ex-wife's lawyer, a copy of which has been provided for this hearing, which indicated that the landlord's daughter can no longer be in the landlord's home and the landlord must evict the tenants. The landlord wants his daughter back.

The landlord served the tenants with a One Month Notice to End Tenancy for Cause or End of Employment (the Notice) on July 16, 2020 by personally handing it to one of the tenants. Copies of 2 of the 3 pages of the form have been provided for this hearing. It is dated July 16, 2020 and contains an effective date of vacancy of August 16, 2020. The reasons for issuing it state:

- 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.

The landlord has not reported the incident to the Ministry of Child Development.

The tenant testified that she spoke to her son, who advised that the landlord's daughter told him it was okay.

The tenant contacted the Ministry of Child Development, who explained a lot. They told the tenant that kids by nature are curious and explore everything, which is totally normal.

The tenants' Advocate testified that, looking at whether or not the tenants have jeopardized another occupant, the Advocate spoke to the tenant but cannot get information from the Ministry of Child Development. The Advocate reported the incident as the tenant had reported it to him. The Ministry confirmed that they had spoken to the tenant, and the Advocate asked them to confirm they were investigating but they couldn't. There is no file with the Ministry and the Ministry is not conducting an investigation.

SUBMISSIONS OF THE LANDLORD:

The landlord can only keep an eye on his daughter's devices. The landlord is not comfortable having his daughter in the back yard to play without supervision.

SUBMISSIONS OF THE TENANT:

The landlord has failed to supervise their daughter. It's for the Courts to decide whether or not the landlord's child can be in his home. The landlord said he could go to court if the tenants pay for the lawyer. The tenants' son even offered to stay inside the house when the landlord's daughter is there.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The Ministry has declined to investigate. There should be a high bar, and they don't see it as that; it's not a significant event. It's a parenting issue with a 9 year old girl and an 11 year old boy, and the landlord's inability to have his daughter in the landlord's home should be before the Court, although the tenants do take it seriously. No one has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the facts do not meet the standard. Neither the tenants nor the Advocate think it's okay, but it's not a tenancy issue. According to the Ministry, the landlord can report it and he can challenge this in Court, and the tenants are more than willing to help.

Analysis

Firstly, I commend the parties and the Advocate for their reasonableness and professionalism during this contentious hearing.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reasons for issuing it are in dispute.

A landlord may issue a notice to end a tenancy if the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; or if the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

I have reviewed all of the evidentiary material that is relevant to the One Month Notice to End Tenancy for Cause or End of Employment (the Notice), specifically the email that the landlord received from his ex-wife's lawyer. There is no doubt that is the reason for issuing the Notice, and it would not have been issued if the landlord had not received the email from his ex-wife's lawyer. Specifically, it states: "I understand too, that you have you have failed to take steps to evict your tenants despite their child constituting an imminent danger..." and, "...your tenants must be evicted before (the child) returns to visit with you." Firstly, it is not up to the landlord's ex-wife or her lawyer to insist that a landlord evict a tenant. The law determines how or when a tenant is "evicted." Secondly, it is not up to the landlord's ex-wife's lawyer to dictate that a Court order be ignored.

Although the landlord testified that he does not feel comfortable leaving his daughter unsupervised, he also testified that he just wants his daughter back. I am not satisfied that this matter is a *Residential Tenancy Act* issue, but an issue that has been before the family courts. The landlord has done his due diligence to speak with the tenant and to comply with the demands of his ex-wife's lawyer, but I am not satisfied that the legislation intended for family court disputes. I find that this is an issue between the landlord and the landlord's ex-wife, and I decline to make any orders with respect to a tenancy that may interfere with, or has or is likely to be before the Courts.

The *Residential Tenancy Act* specifies that a notice to end a tenancy given by a landlord must be in the approved form, and in order to be successful must contain the signature of the landlord giving the notice. In this case, the copy provided by the landlord is not signed by the landlord, and given that the form contains 3 pages and only 2 have been uploaded as evidence, I am not satisfied that the Notice given is in the approved form.

The Notice is cancelled and the tenancy continues.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

The One Month Notice to End Tenancy for Cause or End of Employment dated July 16, 2020 is hereby cancelled and the tenancy continues.

The tenants' application for an order that the landlord make repairs to the rental unit or property is hereby 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: September 03, 2020

Residential Tenancy Branch