



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on August 6, 2020 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 15, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

One of the tenants and landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

Both parties confirmed receipt of the evidence prepared by the other. On this basis, the hearing proceeded. Witnesses appeared for both parties – these individuals were duly sworn in and attended the portion of the hearing concerning their direct testimony only.

Issue(s) to be Decided

Are the tenants entitled to an order to cancel the One Month Notice?

If the tenants are unsuccessful in their Application, is the landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

Neither party provided a copy of the tenancy agreement; however, both sides confirmed the details of the tenancy in the hearing. The tenancy began on May 1, 2010 when the tenants signed an agreement. The rent is currently \$850.00 per month and they paid a security deposit amount of \$425.00. In their statements, the tenants presented that they lived in the lower suite of the house from 2005, then moved to the upper suite in 2010. Currently, another tenant occupies the lower suite, immediately below that rented by the tenants.

The tenants provided a copy of the One Month Notice document. The landlord stated they served this document on July 30, 2020 by affixing it to the door of the rental unit when the tenants were not home. They issued one copy with both of the tenants' names listed. The tenants confirmed they received this three-page document on July 30, 2020 and it was "taped to the door". Additional pages were attached to the document when served to the tenants.

On page 2 of the document, the landlord provided the reasons that they issued this document:

- 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.
 - put the landlord's property at significant risk.
- 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 One Month Notice, provided by the landlord, included five attached pages. These are "letters. . .from neighbours about the issues ongoing at the rental unit." The details on page 2 are stated as follows:

In the past two weeks [the landlord has] had several complaints from surrounding neighbours and city bylaw concerning the drug activity and noise at the rental address. . .It has been reported that you . . .are selling illicit street drugs from the rental unit, also

there is constant yelling and screaming coming from the rental unit at all hours of the day and night. the RCMP have been to the rental several times regarding the noise and drug activity and the ambulance as well regarding drug overdoses on site.

One attached letter is a neighbour's concerns with "drugs . . . being sold out of the house" with a "young woman [who] OD'd in the backyard of the lower half of the suite." The letter also sets out that individual's concern with noise and confrontation with the tenant. It states: "we have put up with their behaviour for many years but this has to stop."

The additional letter is addressed to the mayor of the city, and city council. It sets out that individual's concerns about drug use and sale, the fact that one of the tenants lives in an RV in the yard, the condition of the yard, and recent events involving the downstairs unit.

The evidence provided by the landlord includes witness statements that attest to the conduct and actions of the tenants and a one-page "Petition to assist with the eviction of the tenants". The witness who attended the hearing stated the petition consists of names of concerned individuals in the neighbourhood, collected at the end of August 2020. That witness read their own statement as well as that of a neighbour.

The testimony of the witness in the hearing, as well as the written statements submitted by the landlord, include the following details:

- drug use and sale: this includes an observation of a female overdosing in late June; the tenants' unit passing sales of drugs to the lower unit; drug users coming and going to the house; a witnessed drug transaction;
- tenant living in RV on driveway;
- noise: yelling, domestic violence and parties;
- confrontations: from one of the tenants to neighbours;
- unsafe feeling: children in neighbourhood close to schools and parks; parts around house are unpassable.

The witness in the hearing added these concerns increased over the last year. This involved calls to the RCMP, the city, and "bylaw". A witness statement contains the following summary: the locale is "a drug house where they could care less about the property or how it and their actions affect their neighbours."

In the hearing the landlord stated they personally never witnessed any of this. The landlord made the decision to issue the One Month Notice after considering all the evidence they had compiled. They consider the accounts and letters written from neighbours to be more persuasive than those letters provided by the tenants, which are in the main from the tenants' friends only.

For this hearing, the tenants provided documentary evidence that includes:

- an August 24, 2020 letter that states the writer was asked to do repairs to the rental unit, this to “put up divider fences on both sides of house to keep the traffic from downstairs invading the privacy of the upstairs tenants” – the writer adds that the landlord did not offer to pay;
- a witness who states they have never observed the passing of drugs from the upstairs tenants' unit to that of the downstairs unit;
- neighbours' statements that says they have “not had any negative interaction with any of [the] neighbours” and “never had a problem with [them]” – moreover one statement draws attention to the basement suite as being the source of the “havoc”;
- the ‘Good Neighbour Bylaw’ from the city.

The tenants themselves prepared four written statements. Therein, they state the statements are “pure lies” and what one neighbour observed as drugs being passed downstairs was not. Noise complaints were not identified nor discussed prior to the accusations. RCMP attended once to ask about music volume; at 8pm the tenants turned their music off. The drug overdose described was “in the downstairs unit” where the police have “appeared. . . on numerous occasions.” They maintain they were not living in the RV as they were allegedly observed. They reiterated they have lived in the unit for a number of years and they “respect [their] living situation.”

In one document one of the tenants acknowledges a verbal altercation; however, they give examples of mutual assistance between them and the neighbours in the past.

In another document they describe the downstairs unit as causing “a lot of grievance” for which they need to “barricade the driveway”. A previous visit by the RCMP concerning the “drug house” below was met with the landlord informing the RCMP that they were “a good tenant and no problems with [them] what-so-ever.”

In the hearing, with the aid of their advocate, the tenants provided that:

- they lived in the unit for a long time, but the events in question happened only recently
- they never received warning letters from the landlord or from the city
- the landlord witness stated “suspected drug dealing” – but there is no proof and no charges
- items passing upstairs and downstairs are innocuous items;
- the drug dealing is happening in the downstairs suite
- the tenancy will continue peaceably with the downstairs tenants “gone”.

The downstairs tenant entered the hearing and at the outset of their statement they affirmed an oath. They stated they came to support the tenants in this hearing. They arrived in the unit approximately one year ago, and the tenants never disturbed them in their own downstairs unit. They acknowledged the RCMP visited their unit – they are facing their own eviction for similar complaints and they did not dispute their own eviction in time.

Analysis

Section 47 of the *Act* states, in part:

- (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord’s property at significant risk;
 - (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord’s property,
 - (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property. . .

(iii) has jeopardized a lawful right or interest of another occupant or the landlord.

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord spoke to the reasons in oral testimony; however, I find there is not sufficient evidence to show the One Month Notice is valid. Primarily, the evidence presented does not substantiate the grounds indicated on page 2 of the document.

The reasons involving significant interference or unreasonable disturbance are specific in detail; however, they stem from a neighbour's concern. In my strict interpretation of the section 47, the applicable sections refer to *another occupant* or *the landlord*. The evidence here is comprised of complaints from neighbours.

Additionally, for this ground of the reason for the One Month Notice, the evidence is non-specific on the exact location of the disturbances involving noise. I find the upper and lower units are so close in proximity as to be indistinguishable as a source of noise. That is not to say that noise is not a concern; however, the evidence is not definitive enough to place the responsibility for noise and other disturbances on to the tenants exclusively. Every piece of evidence mentions the lower unit as causing specific instances. What is presented about the upper unit is non-specific.

Also factoring into my consideration is the length of time the tenants have occupied the upper unit. Seemingly this was without incident for on wards of ten years. The tenants were not aware of any incidents prior and the landlord's documentary evidence and witness statement also does not reveal a long-standing pattern of interference or disturbance.

I find there is no evidence to show how one of the tenants taking up occasional rest in the RV on the property violates any bylaws. There is no evidence showing that it is an illegal act, and no record showing a violation was identified or a bylaw enforced. While perhaps outside the norms, I find in and of itself use of an RV on the property does not constitute a reason for ending the tenancy. The conduct described does not lay beyond the guidelines set forth in the 'Good Neighbour Bylaw' provided by the tenants. Further, it is not proven to be a violation or a risk to the health and safety of other occupants or the landlord.

In sum for this ground, the landlord does not show that noise complaints and disturbances due to other activities emanating from the property are solely due to the conduct and actions of the tenant. There is sound evidence on complaints to city

officials, as well as the RCMP being called; however, there is no evidence of warnings or issuances of orders from the city regarding the unit. Similarly, there is no evidence from the landlord that they individually took up specific issues with the tenants at any time.

Subsequent to the issues arising with allegations to the tenants coming forth and made known to them, tensions arose and one of the tenants admits to uttering harsh words to neighbours. I am satisfied these are isolated incidents, and not evident of a long-established pattern of behaviour. The evidence shows the more concerning behaviour emanates from the downstairs unit.

Similarly, the lower unit appears to be the source of the problem for the grounds involving illegal activity. The landlord presented a neighbour's letter to the city council and the mayor; I find the focus and target of that letter is the lower unit. The tenants themselves stated that the lower unit was the source of drug activity and drug use and I find their evidence credible that they erected a fence to prevent or limit traffic to/from the unit below.

The charge of illegal activity constituting one of the grounds to end the tenancy is unfounded. The tenant from the unit below attended in the hearing, and that individual stated their tenancy will end soon. I trust that a more accurate and clearer picture of the tenants' conduct will emerge after the more urgent problems emanating from the unit below are alleviated.

Underlying the landlord's evidence is their statement that they did not observe the behaviour or actions encapsulated in the details of the One Month Notice directly. The landlord listed "drug overdoses" on the details of cause; however, the other evidence presents a single overdose incident. The documentary and direct evidence here is that of neighbours. There is no evidence of a discussion with the tenants or a written identification of the issues to the tenants.

Instead, there are statements from neighbours – primarily a single neighbour – who initiated contact with city council and the mayor and initiated a petition with other neighbours' signatures. Comparing this to the letters of support from contacts provided by the tenants I find the tenants' letters reveal more in the way of direct statements attesting to their character, in contrast to a list of names and statements provided based on hearsay or some degree of speculation.

In line with this, I give weight to the evidence of the tenants that they resided in the unit for a number of years prior to the incidents in question. From the events described and statements presented by the landlord it is more likely than not that the downstairs unit is responsible more recently for discord in the area. The evidence presented does not adequately substantiate the grounds presented to the tenants in the One Month Notice.

For these reasons, I order the One Month Notice to be cancelled.

Conclusion

For the reasons above, I order the One Month Notice issued on July 30, 2020 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 21, 2020

Residential Tenancy Branch