



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC FF

Tenant: CNC OPT PSF OLC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 1, 2020.

Both parties attended the hearing and provided testimony. The Tenant confirmed receipt of the Landlord's application and evidence, and did not take issue with the service of that document package.

The Landlord acknowledged getting the Tenant's application and initial evidence package around August 24, 2020. The Tenant stated she served the Landlord with her amendment and 2nd evidence package in person on September 15, 2020. The Tenant did not provide any proof of service. The Landlord denies getting this package. Without further evidence from the Tenant, I find there is insufficient evidence the Tenant served her amendment and 2nd evidence package to the Landlord. As such, it will not be considered.

Both parties were provided the 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.

Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on both applications with the exception of the following ground:

- to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).

Further, since the Landlord’s application for an order of possession based on this Notice is related, it will also be considered in this decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord’s Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on August 11, 2020. The Notice indicates the following reasons for ending the tenancy on the second page:

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.*

Under the details of cause section, the Landlord speaks to an issue with the Tenant’s cat (feces in the garden area). The Landlord also noted in this part of the Notice that he told the Tenant that she could no longer use the patio area in the yard because of their disagreement. The Landlord noted that the Tenant accused her of bullying, and the Landlord also feels the Tenant bullied him. At the end of the letter, which was attached

to the Notice, the Landlord stated “all I want you to do is clean the rest of the poop in my garden including cat sands. And move your belongings into your rental unit. Don’t leave outside.”

Since the Notice was drafted by the Landlord, around August 6, 2020, the parties have continued to argue and disagree over a variety of things, including bikes in the yard, noise from lawn equipment, guests, allegations of harassment. Much of the Landlord’s evidence relates to matters that occurred after the Notice was issued.

As stated in the hearing, I told the Landlord to explain to me what his basis was for *issuing* the Notice, rather than what has occurred since it was issued. In this decision, I will not speak to and summarize the issues that have happened since the Notice was issued, as I am here to decide on whether or not there was sufficient evidence to support the basis for the Notice at the time it was signed by the Landlord (around August 6, 2020).

With respect to the issues that the Landlord relied upon to issue the Notice, he explained that the main problem was related to the Tenant’s cat’s feces in a portion of the yard which he calls the garden. The Tenant feels this is just a strip of weeds, and is not a garden.

The Landlord testified that the Tenant has lived in the rental unit for a couple years now, but that issues started to arise when he asked the Tenant to clean up the cat feces from the garden. The Landlord stated that on August 1, 2020, he had a day off, and when he was outside, he noticed there was lots of cat feces in a small strip of garden in the back yard. The Landlord stated that the Tenant has a cat, which is using this area as a litterbox.

The Landlord stated that further explained that he emailed the Tenant to stop dumping things in the garden (coffee grounds or cat feces). The Landlord pointed to the photos he took to show the area near the house where the Tenant has “dumped” cat feces, coffee grounds etc. The Landlord stated that since he warned the Tenant about cat feces, he has had several disagreements with her and their relationship has degraded significantly. The Landlord stated he now puts all the Tenants emails in his junk folder, and he feels she is harassing him, and causing him stress.

The Tenant stated that she does have a cat, but she said the feces outside are not from her cat, and she denies dumping any feces in that area. The Tenant stated that after she got a warning from the Landlord about her cat defecating in the yard, via email, at

the beginning of August, she put some ground coffee in that area to try and prevent any cats from further defecating in the area. The Tenant stated she does not dump coffee outside, and this was only done to help prevent cats from continuing to use the area as a litterbox, even though she does not feel it is from her cat.

The parties both agree that they have since started disagreeing over a variety of things, since the cat feces became an issue. However, the feces were the central issue leading up to the issuance of the Notice.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I turn to the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on August 11, 2020.

As stated above, in making my determinations regarding whether the Landlord has sufficient grounds to end the tenancy under this Notice, I will only look at evidence and testimony that relates to issues occurred prior to the Notice being issued. I must determine whether the Landlord had sufficient grounds to issue the Notice, which is based upon the issues present leading up to August 6, 2020.

After reviewing the Notice, I note that it lists multiple grounds for ending the tenancy, as above. Further, under the details of cause section of the Notice, it mostly speaks to the allegations regarding the Tenant's cat defecating in the yard, and the arguments that ensued. As such, I find this is the issue I will focus on, and whether or not it has been sufficiently demonstrated that cat feces issue, and allegations of harassment, gives the Landlord sufficient cause to end the tenancy under any of the grounds selected on the Notice.

I acknowledge that the Landlord has provided many pages of evidence, and emails. I accept, based on the photos and testimony, that there were cat feces in the yard/garden area. However, I do not find there is sufficient evidence to show that the Tenant's cat is solely responsible for this issue. It is widely accepted that cats, including other outdoor cats in the neighborhood, could quite easily jump fences, and travel between adjoining

yards. I find there is insufficient evidence that the issue would not have been caused, at least in part, by cats other than the ones owned by the Tenant. In any event, even if there was sufficient evidence to show it was in fact the Tenant's cat who is responsible for the feces, I do not find this would be sufficient to warrant an end to the tenancy under any of the grounds noted. Also, I accept that tensions have risen since this issue was raised. However, I am not satisfied that any of the interactions, disagreement, or the dysfunction is sufficiently problematic to end the tenancy under any of the grounds selected.

That being said, I caution the parties to increase their efforts to communicate in a more respectful and courteous manner. I note the Landlord stated he now puts all the Tenant's emails in a junk folder. However, this is not an effective strategy to reduce conflict. Further, the Tenant should be mindful about the number of emails she sends, and when she sends them. The Tenant stated she is trying to find a place to move, but she needs some time. I accept that the Tenant is seeking other living accommodations. However, I encourage both parties to try to co-exist in a more respectful and effective manner until the tenancy legally ends.

Ultimately, I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy, at the time the Notice was issued; therefore, the Tenant's application is successful and the Notice received by the Tenant on August 11, 2020, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with her application, I grant the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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: October 01, 2020