



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on September 29, 2020. They seek 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 December 4, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions in the hearing.

At the start of the hearing the tenant stated they served notice of this hearing to the landlord on October 3, 2020. The landlord confirmed they received the notice along with the prepared evidence of the tenant. The landlord confirmed receipt of additional evidence prepared by the tenant immediately prior to the hearing.

The landlord did not prepare documentary evidence in advance of the hearing. On the basis of their receipt of the tenant’s evidence, the hearing proceeded with both parties present.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel the One Month Notice?

If the tenant is 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 August 10, 2015 when the tenant signed an agreement. The rent is currently \$900 monthly, payable on the 20th of each month.

The tenant provided a copy of the One-Month Notice document. The landlord stated they put the document through the mail slot at the tenant's unit on September 21, 2020. The landlord gave the date of October 21, 2020 as the move-out date. On page 3 the landlord listed details: "Tenant threatened neighbour on more than one occasion. Tenant has not kept up property as agreed to."

On page 2 of the document, the landlord provided the reasons 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.
- Tenant or a person permitted on the property by the 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
- Tenant has not done required repairs of damage to the unit/site/property/park

In the hearing, the landlord described aspects of the tenant's behaviour that caused concern and prompted their issuance of the One-Month Notice. These issues include:

- the tenant has not taken care of the yard as agreed to;
- broken city bylaws with fines
- not fixed cats without a breeding permit;
- when a new acquaintance of the tenant started living there, there were police calls for domestic disputes;
- this same acquaintance started to threaten other tenants.

The tenant responded to this in the hearing to say that police attending was because of their own calls due to confrontations and threats from other neighbours to them. On one occasion the partner of the landlord attended to the rental unit with three others, this was to "harass" the tenant personally. Regarding the yard at the rental unit, the

tenant's statement was that the neighbour also uses that same area for garbage, and they had paid \$93 for garbage removal of someone else's garbage in the past.

The tenant attributes the tension in the situation to the landlord's partner and themselves individually. Conversely, the landlord attributes the tenant's acquaintance as being the source of the bullying leading to this "toxic situation."

The tenant's documentary evidence consists almost exclusively of text messages. These show the tenant's communication with others regarding other individuals. There is a plethora of information showing intrusions into their own space, and answers to all sorts of allegations. The messages also appear to contain the tenant's complaints about others' conduct. The identities of each party involved is not provided anywhere in the tenant's account.

Additionally, the tenant provided a photo showing the state of the yard and the state of the neighbour's porch.

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,
 - (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (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. . .
 - (f) the tenant does not repair damage to the rental unit or other residential property, as required under section 32, within a reasonable time.

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. They have not provided sufficient evidence to prove the details they indicate

on page 3 of the One-Month Notice. There is both a lack of quality and quantity of necessary evidence to overcome the burden of proof here.

The landlord did not provide specific information on dates, times and number of incidents involving the tenant. They did not show how all of the matters with other individuals centre on the tenant and become their sole responsibility. Without the direct account from other individuals involved, it is difficult to establish the reliability of their evidence. In one example, the landlord mentioned that they feel threatened by the acquaintance of the tenant; however, they did not describe a specific incident that caused them to feel this way. In short, there are bare allegations with no evidence to make the allegations reliable. This diminishes the credibility of the landlord here.

Conversely, the tenant provided extra evidence in the form of text messages. There is an abundance of correspondence that show a number of different individuals involved in separate incidents. I can establish at the very least that the tenant does not bear full responsibility to the degree that their tenancy should end. Given the lack of detail on the One-Month Notice itself, these messages prove the tenant is not solely responsible for the incidents. What the tenant does present is more plausible in theory, where the solution to a difficult situation here involving the landlord's partner is for the landlord to end the tenancy.

The tenant also provided photos showing the garbage and yard situation. From this, I find their statements that the garbage is really the responsibility of other individuals to be credible. That means their account carries more weight than that of the landlord on this issue. The landlord did not give information on their requests for the tenant to maintain the yard, and they give no information that they set a timeline within which the tenant would be expected to address the situation. From the evidence of the tenant, I find at one point they *did* take action by paying on their own for garbage removal.

The messages centre on egregious actions, and I can safely say that for each action there is an associated reaction. This shifts sole responsibility away from the tenant.

Focusing on the One-Month Notice itself, there is a lack of detail on the document's third page. With threats uttered, as alleged, there is no specific information; instead, the document reads "more than one occasion". This was not expanded upon by the landlord in the hearing and on this issue, they have not met the burden of proof.

The tenant has provided sufficient evidence to outweigh what the landlord presented on the charge of the tenant "not [keeping] up property as agreed to." The tenant's photos

outweigh any details given by the landlord here. The landlord did not state what form the agreement took and what the tenant's responsibilities were with specific yard work. Minus those details, I find the One-Month Notice is not valid.

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 September 21, 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 *Residential Tenancy Act*.

Dated: December 9, 2020

Residential Tenancy Branch