



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nest Property Mngmt and Real Estate Services
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on January 21, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the *Act*):

- to cancel the Landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice); and,
- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice).

The Landlord and the Tenant both attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's Notice of Hearing and evidence packages, and did not take issue with the service of those documents. I find the Tenant sufficiently served her Notices of Hearing and evidence package.

The Tenant confirmed that she received all 3 of the Landlord's evidence packages. The Tenant stated she did not get the packages until a couple of days before the hearing. However, the Landlord stated he sent them by registered mail on January 9, 2021. Proof of mailing was provided by the Landlord. Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed served with the Landlord's evidence packages 5 days after they were sent, January 14, 2021. I find the Landlord sufficiently served his evidence for the purposes of this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

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

Background and Evidence

Both parties agreed that monthly rent was set at \$1,595.00 and was due on the first of the month. The Landlord holds a security deposit of \$797.50. The Tenant moved into the rental unit around September 1, 2020, and the rental unit consists of the upper floor of a house. The lower half of the house is rented out under a separate tenancy agreement by different tenants. The Tenancy Agreement provided into evidence confirmed the above facts. The Tenancy Agreement also lists that carport parking is included in rent, and that the Tenant is responsible for yard maintenance.

The Landlord stated he issued the 10 Day Notice to the Tenant because she failed to pay \$25.00 (late rent fee) for November 2020. The Tenant acknowledged getting the 10 Day Notice on November 4, 2020, and stated she paid the outstanding \$25.00 that same day. The Landlord confirmed the Tenant paid in full on November 4, 2020. The Landlord was aware that the 10 Day Notice is of no force or effect given the Tenant paid in full within the allowable 5 day period after getting the 10 Day Notice. Both parties agreed to set aside the 10 Day Notice, and the remainder of the hearing focused on the 1-Month Notice.

The Tenant confirmed receipt of the 1-Month Notice on October 23, 2020. The Landlord issued the Notice on the following grounds:

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.*

The Landlord attached a schedule to the Notice, explaining that after the Tenant moved in, she immediately started creating problems with the downstairs tenants, and insisted on being compensated for deficiencies. The Landlord noted that the Tenant of the lower unit sabotaged the communal hot water tank, and the upper and lower tenant both were videotaping everything the Landlord was doing. The Landlord noted that this made it difficult to get the repairs done to the hot water tank. The Landlord also stated that the Tenant now has her boyfriend living with her, without permission. The Landlord further noted that the Tenant demanded to know who the Landlord was going to re-rent the lower unit to after it was vacated. The Landlord indicated the Tenant has been difficult to deal with on many levels.

During the hearing, the Landlord was asked to point out any relevant evidence he had, and explain why the Notice was issued. The Landlord stated that when the Tenant moved in, she did so late at night, on the first day of her tenancy. The Landlord explained that the Tenant was busy moving her things in, and making lots of noise until around 2 am the night she first moved in, which upset the people renting the suite below. The Tenant and the occupants of the lower suite had a contentious relationship from that point on.

The Landlord noted that the occupants of the lower unit were also hostile, and shut the hot water off to the whole house, which ended up burning out the tank. As a result of this, the tank had to be replaced. The Landlord stated that this all happened within the first couple weeks of the tenancy, and the Tenant in the lower unit moved out because of all the hostility. The Landlord stated that after the lower unit was vacated, they tried to re-rent, and the Tenant insisted on knowing who was going to be moving in. The Landlord feels this made it more difficult to find new tenants for the lower unit.

The Landlord also pointed out that the Tenant is now having issues with the new Tenants who moved in downstairs. More specifically, the Landlord noted that the Tenant has had several disagreements about the mailbox, and the keys. The Landlord stated that there is one mailbox for the whole house, which is offsite, and both suites share this same box. The Tenant feels she should have her own mailbox, but was unable to demonstrate anything in her tenancy agreement which specified this was agreed to.

The Landlord did not explain what, if anything, the Tenant did that was illegal.

The Tenant stated that she has not done anything wrong, and feels she is being punished for having a disagreement with the initial tenants of the lower unit and for asking for some repairs. The Tenant denied that she moved her boyfriend in, as the Landlord has asserted. The Tenant agreed that she moved into her rental unit late, on the first day of the tenancy, but stated she had no other choice, since it was a long moving day. The Tenant stated that she has kids, and was trying to get the beds set up, and although she was doing this until the early hours of the morning, she had little other choice on the first day of her tenancy. The Tenant stated that prior to moving in, there was no proper condition inspection completed, and so after she moved in, she made a few complaints and requests about dirt and damage. The Tenant stated that the Landlord was not pleased with her requests, and also took the opportunity to tell her that the lower unit was upset with her because of the noise she made on her moving night.

The Tenant stated that it was the occupants of the lower unit who were the aggressive ones, and although she had disagreements with them, after the bad start to their relationship (move-in night), she never threatened them or did anything illegal. The Tenant pointed out that it was the lower unit who took things to the next level, and sabotaged the hot water tank for the whole house, not her. The Tenant stated that the occupants downstairs also would let their dog defecate all over the yard, and she repeatedly had to haul large garbage bags full of feces out of the yard so her kids could play.

The Tenant denies being difficult with the new occupants downstairs, although she agrees there is an issue with the mail. More specifically, she stated that there is only one key, and she has it, so when the occupants downstairs get mail, she has to deliver the mail. The Tenant either wants her own mailbox, or more keys. The Tenant also stated that she is allowed to use the carport, but the occupants of the other suite have verbally attacked her for using that space, since they wanted to use it for their outdoor space. The Tenant feels this contributed to their disagreement and dysfunction.

The Landlord acknowledged that the occupants downstairs were “ridiculous” in their efforts to sabotage.

Although both parties provided copies of emails and text messages, neither party explained what, if any portions were relevant, and why. Neither party directed me to any portion of those communications, specifically, and only provided testimony in the hearing to explain what happened.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

With respect to the 10 Day Notice, I hereby cancel that Notice by mutual consent, as the Landlord acknowledged that it is of no force or effect because all amounts were paid on the same day it was issued, and because it was issued for a late rent fee, not for actual unpaid "rent" or utilities. Both parties agreed to cancel and set aside the 10 Day Notice.

Next, I turn to the 1-Month Notice. I note the Landlord issued the Notice based on the following grounds:

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.*

With respect to the second ground selected above, I note the Landlord did not explain what, if anything, the Tenant did was illegal. I find the Landlord failed to sufficiently elaborate on this matter, such that I could find the Tenant engaged in an illegal activity which adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant. There is insufficient evidence to end the tenancy based on this ground.

With respect to the first ground noted above, I acknowledge the issues identified by the Landlord. I have also considered the explanations provided by the Tenant. Although the Tenant should have been more considerate and mindful of the noise she was making when she was moving in, and setting up her unit late at night, I find the short-lived disruptions that night were not particularly egregious or extreme. That being said, the Tenant should have either moved during the daytime, or moved her things more quietly

if nighttime was the only option. Regardless, I do not find this issue, in and of itself, is sufficient to end the tenancy under the first ground.

I note the Tenant and the occupant of the lower unit had an acrimonious relationship right from the start. However, I do not find the Landlord has sufficiently demonstrated what exactly the Tenant did that would have significantly interfered with or unreasonably disturbed the occupants below, or the Landlord. I note that it was the occupant below who escalated the disagreement to include significant property damage, a broken water tank, and days without hot water. I find this would have substantially contributed to and escalated the dispute between the Tenant and the occupant downstairs. The Landlord specifically acknowledged that the occupant below was being “ridiculous”, which leads me to believe the occupants below were a significant contributing factor in the hot water tank, the difficulty getting tradespeople in to replace it, and the hostility following those events. Although the relationship was clearly dysfunctional, I do not find it has been sufficiently demonstrated that the Tenant’s behaviour warrants an end to the tenancy.

Further, I note the Landlord has stated the Tenant is now having issues getting along with the new occupants below her. However, I find this issue appears to be largely based on the use and access of a shared mailbox. I note the Tenant has been given a key for the off-site mailbox. However, it does not appear the occupants below have their own key. The Tenant would prefer to have her own exclusive mailbox. However, there is nothing in the tenancy agreement specifying that the Landlord has to provide the Tenant with her own mailbox.

The Landlord should obtain a second key for the mailbox, if it is expected that both parties are to share this mailbox. Either that, or obtain a second mailbox, one for each unit. It is not reasonable for the Landlord to expect the Tenant to deliver the mail to the lower unit. Also, the Tenant should leave any mail that is not addressed to her in the mailbox, and not insert herself into the mail delivery process. If the Landlord had provided better access to the mailbox, for each of the units, the current relationship challenges with the new occupants downstairs could have been substantially mitigated. I find the Landlord bears some of the responsibility for the current degradation.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, the Tenant’s application is successful and the Notice received by the Tenant on October 23, 2020, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

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

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: January 22, 2021

Residential Tenancy Branch