



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served each of the landlords with the notice of hearing package and the submitted 23 document evidence files in person on November 5, 2020. The landlords confirmed that no documentary evidence was submitted. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

On November 1, 2020, the landlord served the tenant with the 1 Month Notice dated November 1, 2020. The 1 Month Notice sets out an effective end of tenancy date of December 2, 2020 and that it was being given as:

- the tenant or 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 details of cause state:

- vaping in the house
- cat litter odour on numerous occasions
- continuous loud coughing indoors & at night to the point of waking up children.
- threatened the safety of S. and household.

[reproduced as written]

The landlords clarified that the tenants have been continuously coughing loudly in the rental unit disturbing his family. The tenants argued that S.P. has asthma and sometimes wakes in the morning coughing very loudly.

The tenants stated that S.P. has asthma and allergies and sometimes wakes with a very dry cough.

The landlords claim that the tenants are frequently slamming the door disturbing his family at night. The landlords state that this occurs when the tenants have company over.

The tenants argued that since the door issue was reported to them, the tenants have taken it upon themselves to resolve the door problem by fixing the door. The tenants state that the door is not square to the frame and have shaved the wood to make it fit. The tenants stated that since fixing the door no other complaints have been given by the landlords.

The landlords claim that the tenants cat litter odour is offensive and is causing an issue with his family's health. The landlord stated that his daughter has asthma and is disturbed by the smell.

The tenants argued that they had a “litter buddy” which was found to hold excess cat litter and that this was disposed of. The landlord confirmed that there is no “no pet” clause in the tenancy agreement.

The landlord stated that the tenant, S.P. had threatened the landlords’ safety stating, “would drag you outside and beat you if I didn’t know you”. The landlords also stated that the tenant, S.P. had stated that he was “keeping people at bay”. The landlords stated that he felt threatened by the tenant by these comments but did not contact the local police nor were they able to explain what “keeping people at bay” meant. The landlord had referenced an audio recording of the tenant with this threat against the landlord.

The tenants stated that he “meant no threat to the landlord” by these comments stating that the landlords had been very frustrating to them.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

The landlords have stated that the reasons for cause of loud coughing, slamming a door were reasons for ending the tenancy. However, the tenants have provided a reasonable explanation on these issues and stated that they have now been resolved these issues once they were informed of them with no further complaints from the landlords. As such, I find that these reasons for cause provided by the landlord are insufficient to end the tenancy.

In this case, the landlords have also made the most serious of complaints made that the tenant, S.P. has threatened the safety of the landlord, S.F. The landlords have made unsupported claims of the tenant threatening the landlord. The tenants have disputed this claim. Despite the landlord referencing and playing an audio recording of the “threat”, I found the recording unclear and, in some parts, unable to discern the context of the recording. The landlords have failed to provide enough evidence of a threat made by the tenants against the landlords. The 1 month notice dated November 1, 2020 is set aside and cancelled.

On this basis, I find that the tenants are entitled to an order cancelling the 1 month notice dated November 1, 2020. The tenants having been successful are also entitled

to recovery of the \$100.00 filing fee. As the tenancy continues, I order that the tenants may withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenants' application is granted.

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 26, 2021

Residential Tenancy Branch