



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPT

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the Tenants on November 01, 2020 and November 03, 2020 (the “Applications”).

The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated November 01, 2020 (the “Notice”) on the Application for Dispute Resolution filed November 01, 2020 (the “First Application”).

The Tenants applied for an Order of Possession for the rental unit on the Application for Dispute Resolution filed November 03, 2020 (the “Second Application”).

The Tenants appeared at the hearing with the Witness who was not involved in the hearing until required. The Landlord appeared at the hearing.

The Tenant confirmed that the third tenant named on the Application is a child. I removed the child’s name from the Application as children should not be named as tenants.

The Tenant confirmed that the Tenants have access to, and possession of, the rental unit. The Tenant confirmed that the request for an Order of Possession for the rental unit is a request for access to a common driveway shared with the Landlord between the ocean and rental unit.

I told the parties I would hear the dispute of the Notice first and the Second Application if there was time. The hearing was set for one hour and took one-and-a-half hours to conclude. I heard the parties on the dispute of the Notice but not the Second Application.

This decision relates to the First Application. Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I dismiss the Second Application with leave to re-apply as I find the issue raised in the Second Application is not sufficiently related to the dispute of the Notice. I also note that the Second Application is not urgent given it is not a request for an Order of Possession for the rental unit. The Tenants can re-apply; however, the Tenants need to make the claim under the correct ground as the request is not for an Order of Possession for the rental unit. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”)

I explained the hearing process to the parties. The parties and Witness provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package. The Landlord confirmed receipt of the Tenants’ evidence, other than audio and video recordings.

The Tenant testified that some of the recordings were sent to the Landlord by email on January 16, 2021 and some the day before the hearing. The Tenant testified that one of the recordings was not served on the Landlord. The Tenant could not point to evidence showing the recordings were emailed to the Landlord.

I was not satisfied the Tenant served the recordings on the Landlord given the conflicting testimony and lack of documentary evidence to support that the recordings were served. Further, I was not satisfied the recordings were served in accordance with rule 3.14 of the Rules as, based on the Tenant’s own testimony, they were not served 14 days before the hearing.

I told the parties I would consider whether the recordings should be admitted or excluded pursuant to rule 3.17 of the Rules. The Tenant submitted they should be admitted because they show the Landlord and his wife were deliberately trying to create conflict and then used this as cause for eviction. The Landlord submitted that the recordings should be excluded because he does not know what he is defending himself against.

Pursuant to rule 3.17 of the Rules, I excluded the recordings as I found it would be unfair to consider them when I was not satisfied the Landlord had heard them or could respond to them.

The Tenant confirmed receipt of the Landlord's evidence uploaded to the First Application. The Landlord had submitted further evidence on the Second Application. The Landlord testified that the further evidence was served on the Tenants by email the day it was uploaded. The Tenant denied receiving further evidence by email. The Landlord could not point to documentary evidence showing the further evidence was emailed to the Tenant.

In relation to the further evidence, I was not satisfied it was served on the Tenants in accordance with rule 3.15 of the Rules given the conflicting testimony on this point and lack of documentary evidence to support that the evidence was served. I told the parties I would consider whether the further evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The Landlord submitted that it should be included so I can see the whole context. The Tenant submitted it should be excluded because it was a private conversation between the parties.

I excluded the further evidence as I found it would be unfair to consider evidence I am not satisfied the Tenants have seen or could respond to. I acknowledge that the further evidence includes conversations between the parties; however, I am not satisfied the Tenants were given notice that these would be submitted as evidence and therefore I am not satisfied it would be fair to consider them.

In summary, the Tenants' evidence is admissible other than the audio and video recordings. Only the three part PDF submitted by the Landlord on the First Application is admissible.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence and all oral testimony of the parties and Witness. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started June 01, 2019 and was for a fixed term ending May 31, 2020. Rent is \$1,100.00 per month due on the first day of each month. The Tenants paid security and pet damage deposits. The written agreement includes an addendum.

I understand from the materials that the above is the most recent tenancy agreement between the parties and that the Tenant moved into the rental unit prior to 2019.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
 - c. Put the landlord's property at significant risk.
2. 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.

The Details of Cause outline the following issues:

- Tenant falsely accused Landlord of sexual harassment
- Tenant falsely accused Landlord's wife of using garden shears as a weapon
- Tenant said she had COVID and spat at the Landlord and Landlord's wife in the face
- Tenant has two dogs and the Landlord's son is allergic
- Tenant blocks Landlord's outdoor security camera
- Landlord is concerned about increased water usage on the septic system. Water usage has doubled since Tenant moved in as a single occupant. There are now three occupants. Property is zoned for a single household and the septic system was built as such.

The Landlord testified that the Notice was posted to the door of the rental unit November 01, 2020. The Tenant agreed the Notice was posted to the door of the rental unit. The Tenant testified that the Notice was received at the end of November and could not recall the date.

At the hearing, the Landlord relied on the written submissions and evidence submitted for his position and did not add anything when asked about the grounds for the Notice.

I have read all of the Landlord's written submissions and evidence. The Landlord's materials include the following:

- The Landlord's statement about the issues outlined in the Notice
- The Landlord's wife's statement about the issues outlined in the Notice
- Emails between the Landlord and Tenants
- A doctor's note about the Landlord's son being allergic to dogs
- An article about hypoallergenic dogs
- A map of the property
- Photos
- Screen shots
- Utility bills
- Text messages between the Landlord, Landlord's wife and the Tenants

In relation to the sexual harassment issue, the materials indicate that Tenant V.A. accused the Landlord of sexually harassing the Tenant. The materials also indicate that the Tenant sent text messages to the Landlord's wife about the Landlord sexually harassing the Tenant. At the hearing, the Landlord confirmed the issue is that the Tenant told Tenant V.A. and the Landlord's wife that the Landlord was sexually harassing her.

The Landlord's statement refers to the Tenant making up lies about the Landlord and Landlord's wife being aggressive and the Landlord's wife using garden shears as weapons and threatening the Tenant.

The Landlord and Landlord's wife state that there was an incident between the parties on October 03, 2020 during which the Tenant said she had COVID and spat in the face of the Landlord and Landlord's wife.

The Landlord submitted a photo of a piece of material hanging from a roof. The photo includes a statement that it shows a tarp placed by the Tenant to cover the security camera.

The materials include references to the number of occupants in the rental unit and the septic system issue.

The Tenant made the following submissions at the hearing. The reasons for the Notice are unfounded and false. The tenancy agreement includes the two Tenants and the third "occupant" is an infant. The Tenants have not violated the tenancy agreement. The dogs were part of the tenancy agreement and the Tenants paid a security deposit. The spitting incident mentioned never happened.

The Witness testified about the incident on October 03, 2020 as the Witness was present. The Witness testified that there was no violence or assault.

The Landlord asked the Witness questions. The Witness testified that she did not see the Tenant take her mask off during the October 03, 2020 incident and that the only statement made by the Tenant about COVID was that it would be difficult to find a new place.

In reply, the Landlord confirmed the sexual harassment allegations were made to his wife and to Tenant V.A. The Landlord confirmed he allowed the Tenant to move into the rental unit with dogs and testified that he did not know at the time that his son was allergic.

Analysis

I note at the outset that it is clear from the materials that the parties do not have a good relationship and communicate in an unproductive and at times disrespectful manner. However, I am limited to considering the validity of the Notice based on the grounds outlined in the Notice.

The Notice was issued pursuant to the following sections of the *Act*:

47 (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...

- (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...

The Tenants had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. I accept the Landlord's testimony that the Notice was posted to the door of the rental unit November 01, 2020. The Application was filed November 01, 2020, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I am not satisfied based on the evidence provided that the Landlord has proven the grounds outlined on the Notice for the following reasons.

Tenant falsely accused Landlord of sexual harassment

I am not satisfied based on the evidence provided that the Landlord has proven this ground for the following reasons.

I have read the text messages between the parties. I do not find it clear that the Tenant did accuse the Landlord of sexual harassment in text messages sent to the Landlord's wife.

If the Tenant said something to Tenant V.A. that lead Tenant V.A. to accuse the Landlord of sexual harassment, I do not find this sufficient to end the tenancy given this appears to have been one conversation between Tenant V.A. and the Landlord.

Based on the evidence provided, and put into context, this issue is not sufficiently serious to meet the grounds for the Notice. Given the evidence provided, I find the Landlord is overstating what occurred in relation to this issue.

Tenant falsely accused Landlord's wife of using garden shears as a weapon

I am not satisfied based on the evidence provided that the Landlord has proven this ground for the following reasons.

I am not satisfied based on the evidence provided as to what occurred in relation to the Landlord's wife, the Tenant and garden shears. The parties take different positions on what occurred. There is insufficient evidence before me showing what occurred. Given this, I am not satisfied based on the evidence provided that the Tenant made false allegations against the Landlord's wife in this regard.

Tenant said she had COVID and spat at the Landlord and Landlord's wife in the face

I am not satisfied based on the evidence provided that the Landlord has proven this ground for the following reasons.

The Landlord and Landlord's wife state that the Tenant said she had COVID and spat in their faces. The Tenant and Witness deny this occurred. There is no further evidence before me to support that this occurred. Therefore, I am not satisfied based on the evidence provided that it did occur and am not satisfied it provides grounds for the Notice.

Tenant has two dogs and the Landlord's son is allergic

I am not satisfied based on the evidence provided that the Landlord has proven this ground for the following reasons.

The Landlord allowed the Tenant to move into the rental unit with dogs. I do not accept that the Landlord can now end the tenancy because the Tenants have dogs. I acknowledge that the Landlord's son is allergic to dogs. However, it is the mere presence of the dogs that is the issue and the Landlord permitted the presence of the dogs. Therefore, I am not satisfied the Landlord can end the tenancy on this basis.

Further, the materials show that the Tenants live in a separate building on the Landlord's property. I am not satisfied based on the evidence provided that the Tenants' dogs pose a serious issue to the Landlord's son and his allergies given the parties live in separate buildings on the property.

Tenant blocks Landlord's outdoor security camera

I am not satisfied based on the evidence provided that the Landlord has proven this ground for the following reasons.

I am not satisfied based on the evidence provided that the Tenants are blocking the outdoor security camera. I do not find the Landlord's statement about this and one photo showing a piece of material hanging from a roof sufficient to prove the Tenants are blocking the outdoor security camera or that this is happening on some regular basis. I am not satisfied based on the evidence provided that this issue is occurring or that it is a serious issue.

Landlord is concerned about increased water usage on the septic system. Water usage has doubled since Tenant moved in as a single occupant. There are now three occupants. Property is zoned for a single household and the septic system was built as such.

I am not satisfied based on the evidence provided that the Landlord has proven this ground for the following reasons.

I am not satisfied based on the evidence provided that the Tenants and their infant pose a risk to the septic system. The Landlord's statements to this effect are not sufficient to prove this.

Further, the Landlord allowed both Tenants to live in the rental unit and therefore cannot now end the tenancy because there is increased water usage compared to when the Tenant lived alone in the rental unit. An increase in water usage was a foreseeable outcome of allowing a second tenant to live in the rental unit.

I acknowledge that the Tenants now have an infant and that the tenancy agreement addendum states that there are only to be two occupants. However, the Notice was issued for significant interference, unreasonable disturbance, seriously jeopardizing health, safety or a lawful right and putting the Landlord's property at significant risk. The evidence provided is not sufficient to show that the addition of an infant has caused any of these issues due to water usage or the septic system.

I also note that the Landlord states that the septic system was only made for a single household, yet the Landlord allowed the two Tenants to live in the rental unit. Again, the Landlord allowed for a situation that, according to him, the septic system was not built for. The Landlord cannot now decide to end the tenancy over this issue.

Given the above, I am not satisfied the Landlord has proven the grounds for the Notice. I therefore cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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: February 03, 2021

Residential Tenancy Branch