



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OLC, RR, PSF, MNDCT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62; and
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67.

Both parties attended the hearing. The tenant was assisted by advocate PM. Witness DT for the landlord also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is

dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Preliminary Issue – 10 day Notice

At the outset of the hearing the tenant affirmed a 10 Day Notice was not served.

Section 62(4)(b) of the Act states the director may dismiss all or part of an application for dispute resolution which does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the claim for cancellation of the 10 Day Notice.

Preliminary Issue- Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to end tenancy (the Notice) and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except the cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the cause to end the tenancy.

Both parties agreed the tenancy started on April 01, 2020. Rent is \$1,450.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$725.00 was collected and the landlord holds it in trust. A copy of the tenancy agreement was submitted into evidence.

Both parties also agreed the Notice was served and the tenant received it on November 02, 2020. The reason to end the tenancy is:

- The tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Notice is dated November 02, 2020 and the effective date was December 02, 2020. The tenants continue to reside at the rental unit.

The details of the Notice are:

[tenant] continually disrespects and verbally abuses other tenants in the building. This has caused tenants to vacate in the past and current tenants have suggested leaving in the near future.

Among the complaints is [tenant] "oinking" at another tenant while she walks by [tenant] unit. She has also suggested to tenants negative, untrue statements about the landlord and that she would have her "biker friends" pay the landlord "a visit". [tenant] has been warned about her racist remarks to the tenants however the remarks have not stopped.

The landlord has minimal person-to-person contact with this tenant without having a witness along. The landlord has gone to extremes to make [tenant] and her child [omitted] feel comfortable in their home. A pergola at the side of the unit was fitted with table and chairs along with mini-lights for them to enjoy the outside. The landlord has also dropped Easter treats and at another time Starbucks coffee and treats off in an attempt to keep the peace. All attempts to satisfy [tenant] have failed.

Audio tapes and statements are available from past and present tenants.

The landlord affirmed the rental building is a duplex. The tenant lives on the second-floor rental unit. The previous first-floor tenants occupied the rental unit for ten years and moved out in June 2020. The current first-floor current tenants moved in July 2020.

The landlord and his mother, witness DT, affirmed the tenant was verbally abusive with the previous first-floor previous tenants and yelled racial slurs at them. The landlord

submitted into evidence text messages received from the previous first-floor tenants on April 15, 2020:

I just called my mom and she said that the upstairs lady was saying bunch of crap about me. Saying that I was a frigg*nasty. Bunch of racist comments. Seriously this is ridiculous man that lady needs some help. Any ways I'll talk to you later today.

The tenant denied that she abused, yelled or harmed the previous first-floor tenants and affirmed she did not know that they complained of her to the landlord. The tenant stated the previous first-floor tenants yelled at her.

The landlord testified the current first-floor tenants said the tenant is bullying them, stating they are drug-users and threatening to harm the landlord since they moved in. A text message from the current tenants to the landlord in October 2020 states: "She's nuts to say the last, and always as soon as your dog barks she freaks out, total lose cannon. If anything tell her to lay off the tranquilizers and pot." The tenant stated she does not talk with the current first-floor tenant or bully them.

The landlord stated both the previous and current first-floor tenants said the tenant is verbally abusive with her 8-year-old daughter. The tenant explained her daughter is taking medication for mental health and a social worker is helping both of them.

The landlord affirmed all the tenants complained regarding loud noises caused by the other tenants related to grinding coffee early in the morning, cooking and flushing the toilet.

The landlord said he asked the tenant several times to stop harassing the first-floor tenants and he tried to make her feel happy at the rental unit. The landlord warned the tenant on May 04, 2020:

As you have not give me your notice I believe you are content living in our complex. I do understand you have some concerns with food odours and early morning noise. We all not only cohabitate by in order for all of us to thrive I will attempt to mitigate your concerns. In return I am asking you to keep your verbal intolerance to a minimum. If I notice no improvement with the situation I will be accepting your termination of our lease as of June 30.

The tenant stated the only warning she received from the landlord was the May 04, 2020 text message and every time she complained to the landlord about the noise originated in the first-floor rental unit he asked her to move-out.

Analysis

A tenant may dispute a notice to end tenancy for cause pursuant to section 47(4) of the Act. The tenant was served the Notice on November 02, 2020 and filed this application on November 12, 2020. I find the tenant disputed the Notice within the time frame of section 47(4) of the Act.

The landlord issued the notice pursuant to section 47(1)(d)(i) and alleged the tenant is significantly interfering with or unreasonably disturbing the landlord and other tenants. Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

In the case before me, both parties have provided conflicting testimony regarding hostile verbal exchanges between the applicant and other tenants and the applicant and the landlord, noise complaints and verbal abuses from the applicant against her daughter. The tenant's testimony denying the landlord's allegation was convincing. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find the text messages from the first-floor tenants to the landlord and the testimony provided by the landlord and witness DT regarding the tenant's behavior do not prove, on a balance of probabilities, the tenant is significantly interfering with or unreasonably disturbing the landlord and other tenants. The landlord failed to prove, on a balance of probabilities, the tenant's actions.

The landlord mentioned in the details of the notice that "audio tapes and statements are available from past and present tenants" but did not submit them into evidence. The previous and current first-floor tenants did not attend as witnesses.

Furthermore, the noise complaints against the tenant are about tolerable noise and the tenant clarified the situation with her daughter. I find the tenant's noise and verbal abuse against her daughter do not significantly interfere or unreasonably disturb the landlord and the other tenants and are not a reason to end the tenancy under section 47 of the Act.

As such, I find the landlord failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice is cancelled and of no force or effect.

Conclusion

The One Month Notice dated November 02, 2020 is cancelled and of no force or effect. This tenancy will continue 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 *Residential Tenancy Act*.

Dated: February 08, 2021

Residential Tenancy Branch