



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARK HOUSE RENTAL POOL and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On December 3, 2020, the Tenant filed an Application for Dispute Resolution under the Residential Tenancy Act (“the Act”) to cancel a One-Month to End Tenancy for Cause (the “Notice”) issued on November 27, 2020. The matter was set for a conference call.

The Landlord’s Agent (the “Landlord”), the Tenant and their Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice issued on November 27, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began on November 1, 2020, and that the Tenant was allowed to move in a few days early. However, the parties disagreed as to the move-in date, the Landlord testifying that the Tenant move in on October 27, 2020, and the Tenant testifying that they moved in on October 28, 2020. The parties agreed that rent in the amount of \$2,000.00 per month is due on the first day of each month and that a \$1,000.00 security deposit and a \$1,000.00 pet damage deposit were paid to the Landlord at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on November 27, 2020, by posting it to the front door of the rental unit. The Landlord and the Tenant provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- *Tenant or a 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.*
 - *Put the landlord's property at significant risk*

The Landlord testified that in the early morning of October 29, 2020, the Tenant's son jumped a fence to gain access to the rental property and began banging loudly on the windows of the rental unit, yelling to be let inside. The Landlord testified that the police were called due to the noise and that the police had to wake the Tenant in order to let their son into the rental unit, and that this event was very disturbing to the other occupants of the building.

The Tenant testified that they agreed that the event of October 29, 2020, did happen, as detailed by the Landlord, but that it only happened due to the Landlord not having the intercom set up for them at the front door and not issuing them all of the required keys to the building and rental unit. The Tenant testified that they feel bad about the disturbance and that they will ensure that it does not happen again.

The Landlord testified that it was reported to the strata council that a group of kids were seen in the parking garage, with a large amount of smoke around them, and that the Tenant's son was seen in that group of kids. When asked, the Landlord testified that it was never reported that the Tenant's son was specifically seen smoking in the parking garage.

The Tenant testified that their son does not smoke, but that their son hangs around with another kid from the rental property and that it is that kid who smokes.

The Landlord testified that on November 17, 2020, the Tenant's son was caught on surveillance camera jumping the fence again to gain access to the rental property. The Landlord submitted a letter from the strata with a picture of the incident into documentary evidence.

The Tenant testified that it is not their son depicted in the picture.

The landlord testified that the Tenant was given the opportunity to respond to these claims but that they did not submit a reply to the strata council.

The Tenant testified that they were not given an opportunity to respond to these claims.

The Landlord testified that since there have been three complaints about this Tenant and their son within such a short time, they decided to end the tenancy.

The tenant testified that there has only been one event, they are very sorry it happened, and it will not happen again.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant was deemed to have received the Notice to End Tenancy on November 30, 2020, three days after it was posted to the front door of the rental unit. Pursuant to section 47 of the Act, the Tenant had ten days to dispute the Notice. I find the Tenant had until December 10, 2020, to file their application to dispute the Notice. The Tenant filed their application on December 3, 2020, within the statutory time limit.

In this case, the Landlord is seeking to end this tenancy due to three breaches of the strata rules committed during the first 30-days of this tenancy, on October 29, November 10 and November 17, 2020.

I accept the agreed-upon testimony of these parties that the event in the early morning of October 29, 2020, did in fact happen and that the Tenant agrees that their son did jump a fence and bang on the window of the rental unit in an attempt to get inside as they did not have a key. I also accept that the local police were called to the rental property to deal with this disturbance.

However, during the hearing, I heard contradictory testimony from both parties regarding the involvement of the Tenant's son in the events of November 10 and 17, 2020. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

After careful review of the Landlord's documentary evidence, I find that the Landlord has not provided sufficient documentary evidence to satisfy me that the Tenant's son was involved in either of the events of November 10 or 17, 2020. As there is insufficient evidence of the Tenant's involvement in these events, I will not consider them in my decision.

That leaves me with only the event on October 29, 2020, that has been connected to this tenancy. I have reviewed the details of this event, and although the conduct of the Tenant's son may have been disturbing to others, I find the circumstance of this event are not so significant or severe to be sufficient to terminate this tenancy.

However, I caution the Tenant that further occurrence of disturbing the other occupants of the buildings by the Tenant, the Tenant's son, of their guests, could be grounds to end your tenancy.

Overall, I find that the Landlord has not proven cause sufficient to terminate this tenancy for any of three reasons given on the Notice they issued. Therefore, I grant the Tenant's

application to cancel the Notice issued on November 27, 2020, and I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Conclusion

The Tenant's application to cancel the Notice is granted. The tenancy will continue until legally 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 *Residential Tenancy Act*.

Dated: March 1, 2021

Residential Tenancy Branch