



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's 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.

MB, legal counsel for the landlord, represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The tenant confirmed receipt of the 1 Month Notice dated December 20, 2020, which was posted on the tenant's door. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed, with the exception of the late evidence submitted by the landlord addressed below.

Preliminary Issue – Service of Late Evidence

The landlord uploaded a new document on March 18, 2021, one day before the hearing. The tenant was opposed to the admittance of this late evidence.

Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

In this case the landlord failed to submit this evidence within the required timelines. I find the admission of this late evidence would be prejudicial to the applicant. As this evidence was not submitted within the required timelines, I exercise my discretion to exclude this new evidence for the purpose of this hearing.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began on September 1, 2015. The tenant originally resided in the rental unit with his partner at the time. After the tenant's partner moved out, the tenant continued to reside in the rental unit alone on a month-to-month basis, with monthly rent currently set at \$973.75, payable on the first of the month. The landlord collected a security and pet damage deposit in the amount of \$450.00 each deposit, which the landlord still holds.

The landlord issued a 1 Month Notice to End Tenancy on December 20, 2020 providing 2 grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord provided the following reasons for why they feel that it is necessary to end this tenancy on the grounds provided on the 1 Month Notice. The landlord is a retired senior citizen who resides alone in the other suite in the home. The landlord regularly cares for her two grandchildren, ages 7 and 5. The landlord's daughter in law, KG, manages the rental unit on behalf of the landlord. The tenant's mother pays the rent by way of e-transfer to KG.

An incident took place on or about April 25, 2020 which involved the landlord, the tenant, and the two grandchildren. The landlord testified that this incident was witnessed

by a neighbour as well, but the neighbour has moved, and the landlord has no means of contacting the neighbour to testify as a witness.

It is undisputed that an argument had taken place that day in the yard. The tenant testified that he had permission from the landlord to do some gardening along the garage. The tenant testified that he had purchased some plants, and had taken the time to plant them there. On this date of the incident, the landlord testified that the grandchildren had mistakenly stepped on one of the plants, and the tenant became irate. The landlord testified that the tenant yelled at the landlord and the grandchildren, and uttered profanities. The landlord testified that the tenant also blew smoke in the landlord's face. The landlord testified that the tenant continued to yell, and ripped out the landlord's plants and threw them in the garbage can. KG attended after being called by the tenant, who observed the tenant to be still irate. KG left the residence with her grandchildren.

KG testified in the hearing that she felt that the tenant's behaviour was extremely disturbing, and had scared the landlord and her children, who are now afraid of the tenant. KG testified that the landlord and her children are not able to enjoy the use of the property without fear of further altercations with the tenant. KG testified that the tenant has repeatedly sent her text messages, and continues to act in an aggressive manner, including pounding on walls and using profanity. The landlord submitted a copies of the text messages sent to KG from the tenant.

KG notes that the tenant had apologized to her in the text messages about the April 2020 incident, and admitted that his "reactions are not stable" and that he had "lost his temper". The landlord testified that these admissions support the landlord's belief that the tenant's behaviour is volatile, and poses a significant threat to the landlord and the grandchildren. KG testified that she works during the day, and the tenant repeatedly sends her messages. The landlord submitted a copy of the police incident report after the landlord had called the police.

The landlord also referenced other issues on the 1 Month Notice for why they feel the tenancy should end including "ongoing issue of pungent marijuana smell permeating the landlord's living space causing feelings of illness in a senior citizen from tenant's suite", over useage of water causing the landlord bills on multiple occasions to reach an excess of what 2 people should cost", and "smoking directly in front of landlord's doors/windows; ongoing issue causing feelings of illness".

The tenant testified that the true reason why the landlord has served him with a 1 Month Notice was to end the tenancy in order to raise the rent. The tenant noted the landlord's concern about the water usage and higher bills on the 1 Month Notice as a reason for why the landlord wished to end the tenancy. The tenant denies the use of profanity and pounding directed at the landlord or landlord's grandchildren, stating that he was merely playing a video game with his noise cancellation headset.

The tenant submitted a statement in his evidence package. The tenant states that the April 2020 incident took place after the landlord had started screaming and yelling at him, and removed his plants, and made a scene. The tenant states that the landlord was upset at him, and screamed at him that he had no right to do any planting on the landlord's property.

The tenant states that he did argue and scream, and swear, but states that he "did NOT call her an "fn b...h" in front of her grandchildren". The tenant states that he was in shock, and was angry because he felt that he was lied to about having permission to plant his plants.

Analysis

I have considered the concerns brought up by both parties, as well as the evidence that was provided for this hearing. It is clear from the testimony and evidence that the relationship between both parties has deteriorated significantly. Despite this deterioration of the relationship between both parties, the landlord still has the burden of proving that they have cause to end this tenancy on the grounds provided on the 1 Month Notice, as allowed by section 47 of the *Act*.

Although the landlord provided various reasons for why they felt the tenancy has to end, the main reason is that the tenant has significantly disturbed or interfered with the landlord and her family's right to enjoy her home. The landlord lives on the property of the home, and is a regular caretaker for her grandchildren. The main concern of the landlord and landlord's family is that the tenant has exhibited behaviour that has been extremely disturbing to the landlord and the grandchildren.

In light of the conflicting testimony between both parties, I will focus on the undisputed facts rather than the interpersonal differences between the parties. An incident took place in April 2020, with slightly different versions of the event presented by both parties. It is undisputed that an argument took place involving the tenant's plants, which resulted in yelling and arguing. It is undisputed that the grandchildren were present to

witness the incident, and as noted in the text messages sent by the tenant to KG, the tenant noted that his “reactions are not stable” and that he had “lost his temper”.

While the landlord noted further incidents of swearing from the tenant, I do not find these allegations to be supported in evidence. I find that the tenant provided a valid explanation for why the landlord and any occupant in the home may have heard the tenant shout or make loud noises, and the evidence does not sufficiently support that any cursing or banging was directed at the landlord or landlord’s family. I am also not satisfied that this behaviour has occurred on such a frequent basis to the extent that the tenant has significantly disturbed the landlord’s peaceful and quiet enjoyment of the home. I find that due to the construction of many homes, the homes do not afford the occupants much of a barrier against noise or odours. I am not convinced that the offending odours or noise is a result of any contravention of the *Act* or tenancy agreement, and I am not satisfied that the tenancy should end on this basis.

Based on the totality of the evidence before me, I do not find the event in April of 2020 alone to be sufficient to justify the end of this tenancy. I find that the tenant had taken responsibility for the behaviour that day, and that the cursing and argument had taken place after a disagreement about whether the tenant had the right to use the garden for his plants. Although the landlord testified that the tenant had blown smoke in the landlord’s face, I do not find this statement to be supported in evidence. Although it is unfortunate that young children had witnessed this argument and the tenant’s outburst, I am satisfied that this was a one time event that took place almost a year ago, and the landlord has not provided sufficient evidence to support that similar incidents have taken place since then. Although the tenant’s reaction and behaviour that day were troubling to all parties present or involved, I am not satisfied that the landlord has met the burden of proof to demonstrate that this tenancy should end on the grounds that the tenant has significantly interfered with or unreasonably disturbed the landlord or another occupant. As noted above, I find that the tenant had apologized for his actions and role in this incident, and I find that the incident took place after a disagreement between the parties.

I have noted that the landlord’s testimony is that there are several police reports after the police have been called about the tenant. I do not find that the evidence supports that the tenant is facing any charges under the criminal code, or that the tenant is under investigation for any possible charges that relate to this tenancy. I find that the existence of these reports simply reflect the fact that the landlord has made phone calls to the police about the tenant, and the statements are records of the landlord’s statements to the police. I am not satisfied that these police reports are sufficient to support that the

tenant has engaged in behaviour that justifies the end of this tenancy on the grounds provided on the 1 Month Notice.

Although I accept the landlord and her daughter in law's testimony that the tenant's behaviour is viewed as intimidating and disturbing, I must consider whether the tenant's actions and behaviour have justified the end of this tenancy on the grounds provided on the 1 Month Notice. The landlord's daughter in law testified in the hearing that the tenant repeatedly sends her messages, even while she is at work. Although I accept KG's testimony that she does not approve of the multiple messages sent by the tenant, which was submitted in evidence by the landlord, I note that KG is the main contact and agent for the landlord, and that text messages are the main form of communication between the parties. I have reviewed the messages sent by the tenant, and although the frequency or timing of these messages may be upsetting or disturbing to KG, I find that the messages are tenancy related. I also do not find the tenant had contravened the *Act* or tenancy agreement by sending KG these messages as KG is the designated contact for the landlord for this tenancy. I do not find that KG or the landlord had provided the tenant with any written warnings that the tenant was to communicate with the landlord in any other manner, or that the tenant was to refrain from sending messages at specific times.

The landlord also referenced the smell of marijuana smoke on the property which they attribute to the tenant. In light of the evidence and testimony before me, I find that the landlord has failed to provide sufficient evidence to support that the marijuana smoke or smell originated from the tenant's suite, or was due to the tenant's smoking on the property. I find the landlord has not provided sufficient evidence to support that the tenant has smoked on the property, or has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. I therefore cannot grant an Order of Possession on this basis.

The landlord also expressed concern about the tenant's water usage, which the landlord considered excessive, and has contributed to higher utility bills. In light of the evidence before me, I do not find that the landlord had provided sufficient evidence to support that the tenant had contravened the *Act* or tenancy agreement with the excessive use of any included services or facilities.

I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice of December 20, 2020 is of no force or effect. This tenancy continues 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 *Residential Tenancy Act*.

Dated: March 22, 2021

Residential Tenancy Branch