



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC RP RR OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on April 6, 2021. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. The Landlord's were represented at the hearing by their agent, collectively referred to as the "Landlord". All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence. The Landlord confirmed receipt of the Tenant's application, Notice of Hearing, and both amendments. No issues were raised with respect to service of the documents.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds the Tenant applied for, with leave to reapply, with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice (the Notice) cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

In this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings, or unless the parties specifically pointed me to the evidence in their packages.

The Tenant acknowledged receiving the Notice on January 26, 2021. The Landlord issued the Notice for the following reason:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.

Under the Details of Cause section of the Notice, the Landlord stated that the Tenant has been consistently aggressive, and threatening with many text messages, phone calls, and emails over the last few months. The Landlord noted that they tried to establish and limit communications from the Tenant, and despite issuing a caution notice to the Tenant, she continued to send aggressive emails. The Landlord issued the Notice due to the fact that the Tenant failed to adhere to the communication process established in the "caution notice."

Ultimately, the agent for the Landlord, who was present at the hearing, described that the Landlords issued the Notice because the Tenant did not follow or respect the rules

they set out for communicating with them. Given this was the reason behind the Notice, this is what this decision will focus on.

The tenancy started on or around August 15, 2020, and shortly thereafter, the parties started to have difficulties. The Landlords live above the Tenant, who resides in a suite in the basement of their home. The issues began in August 2020, largely due to the Tenant's different schedule, and the noise associated with being active at various points through the night.

The Tenant acknowledged that she has severe insomnia, and is often awake throughout the night, and during the summer of 2020, she had a partner who would often come and visit after he finished work, which was often very late at night, or early in the morning. The Tenant stated she never had any parties, nor did she play loud music. The Tenant feels any noises she made were just from normal living (dishes, laundry, television).

The Landlord (agent of) stated that the Notice was issued for one main reason, because the Tenant has failed to adhere and respect their wishes with respect to how and when to contact and communicate with them. The Landlord stated that there has been approximately 209 different texts, emails, and letters from the Tenant since last August, which is an average of one per day. The Landlord categorized 33% of these messages as aggressive and hostile in nature. Copies of these messages were provided into evidence.

The Landlord stated that their requests to restrict and channel the Tenant's messages were met with further hostility as the Tenant felt she was doing nothing wrong. The Landlord stated that they tried to mitigate some of their differences by signing an addendum to the Tenancy Agreement on August 23, 2020, whereby the Landlord lays out some rules around noise, and guests. The Landlord and the Tenant agreed to a few new terms, including no guests after midnight for the purposes of partying, no loud music after 10 pm, no sublet, no drugs, no smoking etc.

The Tenant does not refute signing this, but says she has never partied, or had loud music. The Tenant feels she is being punished for having a normal life, but a different schedule than the Landlords.

The Landlord pointed to the journal entries kept regarding the noise and disturbance from the Tenant over the last few months. The entries speak largely to voices, talking,

laughing, cleaning noises, the odd argument, and some music. Many of these notes speak to issues between 1:00 am and 5:00 am, where the Landlords were woken up.

The Landlord and the Tenant continued to have frequent text message communication throughout August, September, October, and November 2020. Many of these messages were pertaining to questions and comments about the appliances, the recycling/garbage, storage, and other general issues with the rental property, tenancy agreement terms, and mail issues. The Landlord and the Tenant also appear to have had conversation about noise, music, conduct and communication preferences. Although many of the messages were cordial, some indicate a growing intolerance and distaste for how each other is acting. For example, at one point in September 2020, the Landlord stomped on the floor when they heard too much noise from below, which the Tenant responded to by voicing her dissatisfaction. At one point the Tenant stated the Landlord was “peeing” her off.

The parties continued to have generally cordial, tenancy related text messages, interspersed with strained and contentious dialogue about appliances and noise throughout September and October, with dialogue becoming predominantly contentious and accusatory during October and November 2020. At the end of November, the Landlords sent the Tenant a typed letter, stating their dissatisfaction with a number of things, including the Tenant’s tone. The Landlord blocked the Tenant’s phone number on November 30, 2020, after giving the Tenant this letter.

Following this, the Tenant began to use email as a means to request things from the Landlord and to communicate. The parties continued to have contentious dialogue over the fireplace, emergency contact channels, storage and other tenancy related issues, and dispute resolution via email throughout December 2020.

On January 8, 2021, the Landlord issued a “caution notice” to the Tenant regarding her continued email communications, which the Landlord found to be disruptive and unreasonable. At this time, the Landlord indicated that any communication would need to be in writing, and put in the mailbox, and the Landlords appointed an agent (present at the hearing) to handle emergency tenancy matters from that point forward.

When the Tenant sent the Landlord an email on January 21, 2021, asking about storage, the Landlord again warned the Tenant that she was breaching their communication rules, by not putting it in writing in the mailbox. The Tenant took issue with the Landlord’s requests to communicate in such a restricted manner, and there were several more emails about the storage. The Tenant was upset because she does

not feel the Landlords should be able to restrict her method of communication so severely.

The Tenant does not feel she has been inappropriate, loud, rude, or hostile, and feels she should be able to send the Landlord an email or text message about tenancy issues, without it being grounds to end her tenancy.

On January 26, 2021, the Landlords issued the Notice to End Tenancy.

Analysis

In the matter before me, the Landlords have the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlords and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on January 26, 2021.

The Landlords selected one ground on the Notice, 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.

As noted in the “details of cause” section on the Notice, and as explained by the Landlords’ agent at the hearing, the Landlords issued this Notice largely due to the fact that the Tenant failed to communicate in the manner the Landlords requested, and as laid out in the “caution notice”. As such, the communication issues will be the focus of my analysis and whether or not this is a sufficient basis to end the tenancy under the ground selected.

I have reviewed the testimony and evidence presented at the hearing. It is clear that the parties have a contentious and somewhat dysfunctional relationship, one which has degraded over time. I accept that the parties have different schedules, and lifestyles, which appears to be the seminal issue, starting shortly after the Tenant moved in. Following this, the parties had lots of dialogue through text message and email. I accept that the Landlords feel this dialogue (continued emails and text messages from the Tenant) is hostile, aggressive, and harassing. Although there is a negative and often

frustrated undertone to many of those texts and emails, I do not find they are sufficiently rude, hostile, threatening or aggressive such that they could be seen as a significant interference or unreasonable disturbance for the Landlords. It appears many of those messages were tied to general issues with the rental unit or the tenancy.

Further, although the Tenant sent emails to the Landlords (taking issue with the communication restrictions, and other matters such as storage) *after* the “caution notice” was issued, I do not find the Landlords have sufficiently demonstrated that this violation of their caution notice significantly interfered with or unreasonably disturbed them. Although I accept the Landlords feel the Tenant’s behaviour (continuing to send emails, despite requests not to) is somewhat defiant, and may be disruptive to them on some level, I do not find it sufficiently meets the threshold to end the tenancy based on a significant interference or unreasonable disturbance.

Given my findings on this matter, I find the Landlords have not established that there are sufficient grounds to end the tenancy. The Tenant’s application is successful and the Notice received by the Tenant on January 26, 2021, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The Tenant’s application is successful. The Notice is cancelled.

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: April 09, 2021

Residential Tenancy Branch