



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice) issued by the landlords; and
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The tenant and the landlords attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The landlord confirmed receiving the tenant's evidence; however, the tenant said he was served some of the landlords' evidence, but refused to accept the second package of evidence. The tenant explained he believed the landlords did not serve the second package of evidence within the required timeline of 14 days of the hearing.

The tenant was informed that the timeline for service of evidence from a respondent, the landlords here, was within 7 days of the hearing.

I find the landlords properly served the tenant with their evidence and I have accepted all of the landlords' evidence. Additionally, it is not up to tenant to make decisions about whether the evidence was appropriately served.

As another procedural matter, the tenant requested an order requiring the landlord to comply with the Act, regulations, or tenancy agreement. In reviewing the tenant's application, this request dealt with his assertion that the Notice was invalid.

I determined that the request for an order requiring the landlord to comply with the Act contained the same information as his request to cancel the Notice. I have therefore not considered the merits of that claim.

Issue(s) to be Decided

Have the landlords submitted sufficient evidence to support their Notice issued to the tenant?

Background and Evidence

The evidence showed this single room occupancy tenancy began on October 18, 2020, monthly rent was \$500, and the tenant paid a security deposit of \$200.

The rental unit was a bedroom in the landlords' home, which has nine bedrooms and five bathrooms.

The landlord said he rents out rooms in his family home to 4-5 tenants at a time and the rental units are located in the basement suite and on the main floor. The tenant occupies a bedroom on the main floor.

The tenants are occasionally allowed to use the kitchen for things such as cooking rice, but that this tenant does not share bathroom or kitchen facilities with the landlord.

Pursuant to the Rules, the landlords proceeded first in the hearing and testified in support of issuing the tenant the Notice. The Notice was dated February 11, 2021, was served to the tenant by personal service, on February 12, 2021, and listed an effective end of tenancy of March 18, 2021. Both parties submitted a copy of the Notice.

The causes listed on the Notice alleged that the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, and the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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, or the landlord.

In response to my inquiry, the landlord confirmed that the tenant had not engaged in illegal activities, rather he misunderstood that part of the Notice.

The landlord submitted that he shares his home with multiple tenants as they understand the needs of immigrants, students, retired people and young families. The landlord said that he, his wife, three children and father all live in the home and that there will be general noises of family living.

As to the reasons the landlord is seeking to end the tenancy, he submitted that the tenant has inappropriately used the laundry room as a kitchen and food scrap collection area. The tenant has stored his personal possessions in the laundry room, in excess of what was allowed, and that the tenant has left kitchenware in the laundry sink, dirty food packages in the lint basket, and food scraps. The landlord submitted that no other tenant uses the laundry room for storage or kitchen.

The landlord submitted that the tenant has used the landlords' private area without authority. For instance, the tenant left his rubber boots in the middle of the garage, and did not ask permission. Further, the tenant has put some of his boxes in the garage, without permission.

The landlord submitted that the bathroom the tenant uses is also shared currently with another tenant. The bathroom is not the tenant's private bathroom and that he does not clean the bathroom properly after using it.

The landlord submitted that when the tenant uses the bathroom in the middle of the night, he wears loud, squeaky rubber slippers, disturbing other tenants.

The landlord submitted that the tenant has shown a pattern of “asocial” behaviour and poor communications with the other occupants of the residential property. For instance, according to the landlord, the tenant gives his father and another tenant intimidating looks.

Further, according to the landlord, the tenant gave a vulgar hand gesture to one of his children. Another instance, the tenant reacted negatively when he told the tenant his doctor could not call him on the landlord’s personal cell phone.

The landlord submitted further that the tenant keeps his door wide open and everyone else living in the residential property feels uncomfortable.

Overall, according to the landlord, the tenant does not seem to be a good fit within the household and he has offered him many times to end the tenancy.

Filed into evidence were photographs of the food scraps, the laundry room, the boxes and bags left in the crawl space, and emails.

Tenant’s response –

The tenant denied that he interfered with or disturbed the landlords or other occupants, that he left dirty recycling, used the laundry room carelessly or take up extra space.

The tenant submitted that he does not look at people the wrong way or question the landlords’ parenting skills.

The tenant submitted that it was in fact the landlord who confronted him and acted belligerently one day, on January 22, 2021, to the point the tenant felt humiliated and insulted.

The tenant denied staring at other people and the only reason he ever leaves his door open was to allow heat in, as his room is not heated.

The tenant submitted that he understands there will be extra noises in a home shared by so many people, but that he has been subjected to excessive noise himself, with nothing being done by the landlord.

The tenant submitted that he has only ever used the kitchen with the landlord's permission and that he leaves the kitchen cleaner than he found it.

The tenant submitted that there are three tenants using the same bathroom and nobody cleans it up. The tenant submitted that he does have to use the bathroom at night, which is normal, and denied that his rubber shoes are squeaky.

The tenant submitted that he was never presented with any written complaints and did not know his tenancy was at stake until being given the Notice.

Included in the filed into evidence by the tenant was written submissions, photographs, and emails.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In an application to cancel a One Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. The Notice here set out that it was being given as the tenant or person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

Where 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 that burden.

As to the second cause, Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a One Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

In this case, the evidence consisted of the disputed testimony and documentary evidence of the parties.

There was no evidence that the tenant was issued any written complaints or warnings prior to being issued the Notice, which, if valid, would allow the tenant the opportunity to address these concerns.

I find it unreasonable that the landlord did not issue written complaints to the tenant prior to issuing the tenant a Notice to end the tenancy, for complaints of the nature raised by the landlord.

Overall, I am not satisfied that leaving dishes in the laundry room sink, or using extra shelves, keeping a door open, or going to the bathroom at night, among other complaints raised by the landlord, amounts to significant interference or unreasonable disturbances to the landlords or the other occupants. I do not accept that leaving a door open is significant interference.

I further find the landlord cannot regulate the nightly biological urges of the tenant or require him to not use the washroom at night.

For the above reasons, I find the landlords submitted insufficient evidence that the tenant's actions rose to the level of significant interference with or unreasonable disturbance of another occupant or the landlord of the residential property.

As a result, I find the landlords' One Month Notice to End Tenancy for Cause, dated February 11, 2021, for an effective move out date of March 18, 2021, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled and order that the tenancy continue until ended in accordance with the Act.

Conclusion

The tenant's application to cancel the One Month Notice is granted. The One Month Notice dated February 11, 2021, for an effective move out date of March 18, 2021 is cancelled. The tenancy will continue until it is 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: April 14, 2021