



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

On January 26, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”) and seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing with O.D. attending as counsel for the Tenant. K.B. attended the hearing as an agent for the Landlords. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, except for O.D., provided a solemn affirmation.

O.D. advised that each Landlord was served with the Notice of Hearing package by registered mail on January 26, 2021 and K.B. confirmed that these packages were received by the Landlords. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served the Notice of Hearing packages.

She also advised that the Tenant’s evidence was served to the Landlords by email on April 6, 2021, pursuant to an agreement to do so. K.B. confirmed that the Landlords agreed to receive this evidence by email and acknowledged that the Landlords received

this evidence. As she was prepared to respond to the Tenant's evidence, I have accepted this evidence and will consider it when rendering this Decision.

K.B. advised that she served the Landlords' evidence to the Tenant by email on April 13, 2021, pursuant to an agreement to do so. O.D. confirmed that the Tenant agreed to receive evidence in this manner, and she confirmed that he received this evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenant's Application with respect to the Notice, and the other claim regarding the Order to comply was dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2019, that rent is currently established at \$950.00 per month, and that it was due on the first day of each month. A security deposit of \$475.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

K.B. advised that the Notice was served to the Tenant by posting it to his door on January 18, 2021. The reasons the Landlord served the Notice are because the:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and
 - jeopardize a lawful right or interest of another occupant or the landlord.

The Notice indicated that the effective end date of the tenancy was February 28, 2021.

She advised that for months prior to service of the Notice, there were noise complaints between the Tenant and the tenants upstairs. However, she noted that there had not been any complaints between the Tenant and the previous tenants upstairs. She stated that the home was old with little sound proofing. Given the COVID pandemic, all the tenants of the property spent more time at home, exacerbating the perceived noise issues.

She submitted that the Tenant illegally video taped, and audio recorded the upstairs tenants. She stated that the Tenant would unreasonably expect that the upstairs tenants would not make any noise and he would bang on the ceiling when he detected any noise. She testified that the Tenant complained that the upstairs tenants would flush their toilet excessively; however, she noted that they cannot simply stop flushing their toilet. She stated that the upstairs tenants eventually vacated the property because they were fed up with the actions of the Tenant. They filed a police report against the Tenant and contemplated filing a restraining order as they did not feel safe. She referenced the upstairs tenants' statements as documentary evidence to support her position. She

stated that she did not submit copies of warning letters to the Tenant as he provided those in his own evidence.

O.D. advised that the Tenant did not have any issues with the previous upstairs tenants, and he has not had any issues since the upstairs tenants moved out on March 3, 2021. She submitted that the Tenant would have problems with the upstairs tenants because they would be extremely noisy after 11:00 PM and they would intentionally increase the amount of noise that they made if the Tenant brought these issues to their attention. She stated that the upstairs tenants would intentionally and routinely flush the toilet multiple times when the Tenant was showering and she advised that the upstairs tenants would smoke marijuana inside their unit, which would filter down into the rental unit. She referenced multiple emails, submitted as documentary evidence, that were sent to the Landlords advising of these problems; however, the Landlords did not take any steps to investigate the issues or to address any of these concerns. She submitted that the reason the Tenant attempted to capture the upstairs tenants' behaviours is because K.B. advised him to document the situation. O.D. emphasized that the Landlords did not provide sufficient evidence to justify service of the Notice, that the Landlords' evidence is unsworn, and that it appears to be drafted by just one person.

K.B. testified that she did not advise the Tenant to film the upstairs tenants but simply informed him that "they would need to be caught in the act."

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlords' Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 55 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) 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

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Regarding the validity of the reasons indicated on the Notice, I find it important to note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. When reviewing the totality of the evidence before me, it is apparent, in my view, that there has been ongoing conflict between the Tenant and the upstairs tenants, who have recently vacated the property.

As the onus is on the Landlord to prove that the Tenant acted in a manner to warrant service of the Notice, while K.B. may have investigated the conflict, I find that there is little evidence submitted by K.B. that any actions were taken to determine which party was the source of the conflict, or to mediate or find a solution. Furthermore, had K.B. determined that the Tenant was the source of the conflict, I do not find there to be sufficient evidence that she ever brought the Tenant's alleged actions or behaviours to his attention, in writing, so that he would have an opportunity to correct the problem.

The consistent evidence before me is that the Tenant and the former upstairs tenants were dissatisfied with each other, and it is not beyond the realm of possibilities that they both engaged in heated, unpleasant discussions and interactions. It is also not beyond the realm of possibilities that the Tenant, in my view, could have behaved in a manner

that was a contributing and aggravating factor to the dysfunctional relationship between the parties, leading to them becoming mutually antagonistic towards each other.

However, I do not find that the Landlords have submitted sufficient or compelling evidence to substantiate service of the Notice upon the Tenant. Ultimately, as I am not satisfied that the Landlord has sufficiently substantiated the grounds for ending the tenancy, I am not satisfied of the validity of the Notice and I find that the Notice is cancelled and of no force and effect.

As an aside, while I am not persuaded that the Tenant was solely to blame for the dysfunction within this property, I strongly caution the Tenant that he is on formal notice that any continued, escalated behaviours or actions that are unacceptable or inappropriate may jeopardize his tenancy.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of January 18, 2021 to be cancelled and of no force or effect.

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 21, 2021

Residential Tenancy Branch