



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 10, 2021 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated January 30, 2021 (the “Notice”). The Tenant also applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Tenant appeared at the hearing with T.T. who also lives in the rental unit. The Landlord appeared at the hearing with J.H. to assist. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The parties provided the correct rental unit address which is reflected on the front page of this decision.

The Tenant confirmed the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is raising the same issue as the dispute of the Notice and therefore I have only considered the dispute of the Notice. The request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is dismissed without leave to re-apply.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package but not the Tenant’s evidence.

The Tenant testified that his evidence was served on the Landlord. T.T. testified that the Tenant's evidence was served on the Landlord in person February 21, 2021 with the hearing package.

T.T. testified that the Tenant did not receive the Landlord's evidence.

The Landlord testified that her evidence was served on the Tenant by registered mail which was sent to the rental unit April 11, 2021. The Landlord provided Tracking Number 1. I looked Tracking Number 1 up on the Canada Post website which shows a notice card was left in relation to the package April 13, 2021 and April 20, 2021. The Tenant testified that there was no notice card left at the rental unit. The Landlord testified that some evidence was put in the mailbox of the rental unit April 15, 2021.

T.T. testified that she received an envelope with some photos in it about hitting a pole which she knew nothing about.

Each party had to serve their evidence on the other pursuant to rules 3.14 and 3.15 of the Rules. Each party had to prove service of their evidence pursuant to rules 3.5 and 3.16 of the Rules.

The parties gave conflicting testimony about whether the Tenant's evidence was served on the Landlord. The Tenant did not submit documentary evidence of service. Therefore, I am not satisfied the Tenant served his evidence on the Landlord. Pursuant to rule 3.17 of the Rules, I exclude the Tenant's evidence as I find it would be unfair to consider it when I am not satisfied it was served on the Landlord.

I am satisfied the Landlord served some of her evidence on the Tenant by registered mail as the Landlord was able to provide Tracking Number 1 to support service. I am satisfied the Tenant was served in accordance with section 88(c) of the *Residential Tenancy Act* (the "*Act*"). I am satisfied based on the Canada Post website information that notice cards were left in relation to the package. The Tenant cannot avoid service by failing to pick up registered mail packages. The Tenant is deemed to have received the package April 16, 2021 pursuant to section 90(a) of the *Act*.

I am satisfied the Tenant received the second package of evidence as T.T. testified that she received an envelope with some photos in it about hitting a pole which is what the second package of evidence uploaded to the RTB website contains.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed there is a written tenancy agreement between them which started August 01, 2020.

The Notice was submitted as evidence. The grounds for the Notice are that the Tenant or a person permitted on the property by the Tenant has:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord
2. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
3. Put the landlord's property at significant risk

The Landlord testified that the Notice was posted to the door of the rental unit January 30, 2021.

T.T. testified that the Notice was received January 30, 2021 posted to the door of the rental unit.

The Application states that the Tenant received the Notice January 31, 2021 posted to the door of the rental unit.

The Landlord confirmed that the basis for the Notice is as follows:

- The Tenant damaging a post

- The Tenant drilling holes into the driveway
- The Tenant installing an outlet in a cupboard
- The garage being messy
- The Tenant causing damage to the garage wall by hanging items on it
- The Tenant having cameras in the rental unit pointing outside
- The Tenant getting spray paint on gravel, the driveway and the walkway
- The Tenant having a boat, trailer, car and BBQ and issues with where these are stored
- The Tenant causing damage to the garage door
- The Tenant disturbing other tenants
- The Tenant paying gas bills late

The Landlord submitted the following documentary evidence:

- Emails to the Tenant about damage to the post
- Photos of the above issues
- E-transfer screen shots
- Text messages from other tenants with complaints about the Tenant
- Documentation about utility bills
- Emails between the parties about utility bills

Analysis

The Notice was issued pursuant to section 47(1)(d) of the *Act* which states:

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, or
 - (iii) put the landlord's property at significant risk;

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. T.T. testified that the Notice was received January 30, 2021. However, the Application states that the Notice was received January 31, 2021. Given the conflicting information, I am not satisfied as to whether the Notice was received January 30, 2021 or January 31, 2021. The Application was filed February 10, 2021, 11 days after January 30, 2021 and 10 days after January 31, 2021. I find that the evidence should be clear that a tenant disputed a notice to end tenancy late before making such a finding. I do not find the evidence here to be clear that the Tenant disputed the Notice late. Therefore, I accept that the Tenant disputed the Notice in time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice.

I have considered the Landlord's testimony as well as the Landlord's documentary evidence. I do not find any of the grounds listed for the Notice to be sufficiently serious to warrant ending this tenancy, other than possibly the following grounds:

- The Tenant having cameras in the rental unit pointing outside
- The Tenant disturbing other tenants
- The Tenant paying gas bills late

I do not find that the Tenant paying gas bills late amounts to significantly interfering with or unreasonably disturbing another occupant or the landlord, seriously jeopardizing the health or safety or a lawful right or interest of the landlord or another occupant or putting the landlord's property at significant risk and therefore have not considered this ground further. Late payment of utilities should be dealt with pursuant to section 46 of the *Act*.

In relation to the Tenant having cameras in the rental unit and the Tenant disturbing other tenants, there is no documentary evidence before me showing that these issues were brought to the Tenant's attention in writing prior to the Notice being issued. I find that notifying the Tenant of these issues in writing and allowing the Tenant an opportunity to address these issues is the first step prior to issuing a One Month Notice based on these issues. In the absence of documentary evidence showing that the Tenant was notified of these issues in writing and provided an opportunity to address these issues, I am not satisfied the Landlord had grounds to issue the Notice and I cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Notice is cancelled. The tenancy will continue 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 *Act*.

Dated: May 04, 2021

Residential Tenancy Branch