



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNC, PSF, LRE, OLC, FFT, MNDCT
 LL: OPC, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on February 3, 2021 (the “Tenant’s Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a One Month Notice for Cause;
- a monetary order for damage or compensation;
- an order restricting the Landlord’s right to enter;
- an order that the Landlord provide a service or facility; and
- an order for the landlord to comply;

The Landlord’s Application for Dispute Resolution was made on February 9, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for Cause; and
- an order granting the recovery of the filing fee.

The Landlord attended the hearing at the appointed date and time. The Tenant A.W. attended the hearing 6 minutes into the hearing. At the start of the hearing, both parties confirmed service and receipt of their respective Application packages. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement or the *Act*.

The Tenant's request for a monetary order for money owed or compensation for damage or loss, and an order for the landlord to comply ,an order to restrict the Landlord's right to enter, and an order that the Landlord provided a service or facility are dismissed with leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice to End Tenancy for Cause (the "One Month Notice") dated January 24, 2021, pursuant to Section 47 of the *Act*?
2. If the Tenants are unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 47 and 55 of the *Act*?
3. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

Both parties testified and agreed that the tenancy began on August 1, 2018. Rent in the amount of \$1,231.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$600.00 which the Landlord continues to hold.

The Landlord stated that he is seeking to end the tenancy in relation to several concerns. The Landlord stated that the Tenant has been smoking in his rental unit. The Landlord stated that smoking is not permitted. The Landlord stated that he is experiencing health issues as a result of the smell of smoke.

The Landlord stated that the Tenant has discarded his cigarette butts outside in a drain, which may cause damage to the drainage system. The Landlord stated that the Tenant has had an unauthorized Tenant reside with him in the rental unit. The Landlord has provided digital evidence in support.

Lastly, the Landlord stated that the Tenant has been making noise in the rental unit which has impacted the quiet enjoyment of the Landlord and the other occupants at the rental property. The Landlord stated that a previous occupant moved out of their rental unit about 1 year ago as the Tenant made too much noise. The Landlord stated that since then, there has been a verbal complaint from the new occupant regarding the Tenant playing music and video games too loudly.

The Landlord has provided a copy of the caution notices he has issued to the Tenant. Also the, Landlord has provided a letter from the daughter of the occupant who reside directly beside the Tenant.

For the above-mentioned reasons, The Landlord stated he served the Tenant with the One Month Notice on January 24, 2021 with an effective vacancy date of February 28, 2021 by posting it to the Tenants' door. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice are;

"Tenant has allowed an unreasonable number of occupants in the unit/site"

"The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the Landlord's property at significant risk"

"Breach of a material term of the tenancy agreement that was not corrected within a reasonable times after written notice to do so."

"Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

In response, the Tenant stated that he does not smoke in the rental unit and has always gone outside to do so. The Tenant stated that the Landlord's digital evidence shows that he is walking outside with an unlit cigarette in his mouth. The Tenant also denied being responsible for putting cigarette butts down the drain. The Tenant provided photographic evidence showing that one of the Landlord's guests was smoking on the rental property.

The Tenant stated that he is part of a band and practices his guitar occasionally, only for one hour between 4:00pm and 8:00pm. He denies making any other noise outside of what can be considered reasonable noise made while living in his rental unit. The Tenant stated that he can also hear noise from other units but doesn't complain as he is aware that this is part of residing in close proximity to others.

In relation to the unauthorized guest, the Tenant stated that his girlfriend at the time attended the rental unit to visit and at time sleep over. The Tenant denied that his girlfriend moved into the rental unit. The Tenant confirmed that he is no longer in a relationship, therefore, this is no longer an issue. The Landlord confirmed the same.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice on January 24, 2021 by posting it to the Tenant's door. The One Month Notice has an effective vacancy date of February 28, 2021. The Tenant confirmed having received the notice on January 24, 2021. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlord is seeking to end the tenancy as the Tenant has been smoking in the rental unit, being noisy, having an unauthorized occupant reside in the rental unit, and for disposing of cigarette butts in a drain.

The Landlord provided a copy of a conversation between himself and the daughter of the occupant who resides beside the Tenant. I find that the letter states that the

occupant does not want to get involved in the dispute and that she wants to mind her own business. As such, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant is currently smoking in the rental unit or is making excessive noise. I find that the digital evidence provided by the Landlord shows the Tenant going outside to smoke, contrary to the Landlord's testimony of smoking inside.

Furthermore, during the hearing, the parties confirmed that the Tenant no longer has his girlfriend attend the rental unit. Lastly, I find that the Landlord provided insufficient evidence to demonstrate that the Tenant was responsible for putting cigarette butts down the drain at the rental unit. I find that the Tenant has demonstrated in his evidence, that the Landlord has a guest over who smokes on the rental property.

I find that the Landlord provided insufficient evidence to demonstrate that he has sufficient cause to end the tenancy. Nevertheless, the Tenant is now warned that increased incidents of this type or any further escalation, may give the Landlord sufficient cause to end the tenancy.

In light of the above, I cancel the One Month Notice, dated January 24, 2021. I order the tenancy to continue until ended in accordance with the Act. As the Landlord was not successful, I find that he is not entitled to the return of the filing fee.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated January 24, 2021 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 *Residential Tenancy Act*.

Dated: May 04, 2021

Residential Tenancy Branch