



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 16, 2021 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated February 05, 2021 (the “Notice”). The Tenant also sought reimbursement for the filing fee.

The Tenant appeared at the hearing and called K.F. and R.S. as witnesses. The Agent for the Landlord appeared at the hearing and called K.C. as a witness. The witnesses were not involved in the hearing until required. 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 and witnesses provided affirmed testimony.

The Agent confirmed the correct Landlord name during the hearing which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent confirmed receipt of the hearing package and Tenant’s evidence. The Tenant acknowledged receipt of the Landlord’s evidence and said he did not know if he received all the Landlord’s evidence. The Agent confirmed all the Landlord’s evidence was served on the Tenant. I told the Tenant to let me know if the Agent referred to evidence during the hearing that the Tenant did not have. The Tenant did not mention during the hearing that he did not have evidence referred to by the Agent.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence

submitted and the oral testimony of the parties and witnesses. I will only refer 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, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. There was no issue that there is a tenancy agreement between the parties.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonable disturbed another occupant or the Landlord.
2. 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.

The Details of Cause on the Notice state:

Warning email sent to tenant on February 3rd, 2021 stating: "Your continued disturbance of the residents of unit 102...by noise and loitering outside their unit, looking through the window, etc. is a serious breach of both your tenancy agreement and the Residential Tenancy Act. These actions must permanently cease immediately. Failure to comply will leave us no alternative but to end your tenancy. Govern yourself accordingly."

We also have video evidence of the above.

There was no issue that the Notice was served February 05, 2021 and received by the Tenant the same day.

The Agent for the Landlord testified that the Notice was issued due to the Tenant peering in the window of unit 102 and loitering outside the same window. The Agent advised that a warning email was sent to the Tenant about this behaviour. The Agent submitted that the photos in evidence show the Tenant's behaviour. The Agent testified that the Tenant continued to loiter outside the window of unit 102 after the Notice was issued. The Agent advised that the assistant resident manager and his wife live in unit 102. The Agent submitted that the assistant resident manager and his wife are afraid of the Tenant because he is loitering and looking in their window on continuous occasions. The Agent referred to a letter in evidence from the assistant resident manager's wife. The Agent also referred to letters in evidence from others who have had "run-ins" with the Tenant.

K.C. is the assistant resident manager and testified as follows. The Tenant has been very difficult to deal with over the three years he has been assistant resident manager. His wife is terrified to leave their apartment because she is afraid she will run into the Tenant by the garbage. The Tenant's behaviour has affected their life and his wife is upset.

In answer to questions from the Tenant, K.C. relied on one photo in evidence to show that the blinds in the window of unit 102 have a crack in the side that would allow someone to see into the unit if they were standing there moving their head back and forth. K.C. also testified that there is nothing to look at in the direction of his window other than his window and patio. K.C. testified that he does not have evidence of the Tenant making noise but that he hears the Tenant every time the Tenant is out by the recycling bins. K.C. testified that the Tenant makes an extraordinary amount of noise by banging lids and slamming bins against the back wall.

The Tenant provided the following relevant testimony and submissions. The Landlord has not submitted evidence showing anyone's face looking into the window of unit 102. The blinds of unit 102 are closed in every photo submitted. The photos submitted by the Landlord are not of the Tenant. There are two other tenants who live in the building who look like the Tenant. The faces of the individuals in the photos are not shown. The Tenant has never looked through the window of unit 102. The blinds to unit 102 are permanently closed. The Tenant has not been loitering outside the window to unit 102 and there is no evidence that he has been. The Landlord has not submitted any evidence of noise. There is no evidence about how loud the alleged noise is or how often it occurs. The Tenant does not make excessive noise in the garbage area.

K.F. testified as follows. All tenants make noise as it is impossible not to make noise. There are areas tenants can be around the property without loitering. Any person exiting or entering the garbage area would see the window of unit 102 given its location.

R.S. testified as follows. The blinds in the window of unit 102 have been closed ever since R.S. moved into the building. Going into the backyard of the building is not loitering. Dumping garbage makes noise.

The Tenant provided written submissions and documentary evidence.

The Landlord provided the following documentary evidence:

- Photos
- A letter from M.S.
- The February 03, 2021 email to the Tenant about disturbing unit 102
- A letter from J.C. with complaints about the Tenant
- A letter from J.M. with complaints about the Tenant
- A letter from K.C. about a call to RCMP

Analysis

The Notice was issued pursuant to section 47 of the *Residential Tenancy Act* (the “Act”) and the following subsections:

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...

(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...

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There was no issue that the Tenant received the Notice February 05, 2021. The Tenant had until February 16, 2021 to file the Application given February 15, 2021 was a holiday. The Application was filed February 16, 2021, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

The only grounds for the Notice stated on the Notice relate to the Tenant disturbing the residents of unit 102 through noise, loitering outside their window and looking through their window and therefore I have only considered whether the Tenant has done these things. Further, the Notice was issued February 05, 2021 and therefore I have only considered whether the Landlord had grounds to issue the Notice as of February 05, 2021.

Given the conflicting testimony about whether the Tenant has been making noise, loitering or looking in the window of unit 102, I have primarily considered the photos submitted.

I note that the Landlord did not submit video evidence of the Tenant loitering or looking in the window of unit 102 despite having video evidence. The video evidence would more accurately show the behaviour of the person in the photos including their movements and how long they were in the area. I cannot accurately determine the person's movements or how long they were in the area from the photos. It is not clear to me why the Landlord did not submit the video evidence which would have been the best evidence of what was occurring with the person shown in the photos and unit 102.

Most of the photos submitted do not show the person in them looking in the window of unit 102. I find that there are two sets of photos (L10, L13, L14 and L25, L26) which may show the person looking in the window of unit 102. Although there are five photos, they are of only two incidents. I say "may" because I cannot tell from the photos what the person is looking at. The photos are of the person's back. I cannot tell from the photos where the person is looking. Further, I cannot tell from the photos whether the photos capture a glance or the person staring. I also note that the blind in the window is closed such that the person could not see inside unit 102.

I note that the window of unit 102 is directly beside a common area where tenants would have to go regularly to put out their recycling and garbage. I agree with K.F. that anyone exiting or entering the garbage and recycling area would see the window to unit

102. The location of the window of unit 102 makes it difficult to tell from the photos whether the person shown in them is simply looking around while in a common area or is loitering and looking in the window of unit 102.

I note that the blinds in unit 102 are closed in every photo submitted. I do not accept that the one photo K.C. pointed to shows a gap between the blind and the window frame as there is no clear gap shown. Further, K.C. testified that someone standing there moving their head back and forth could see through the gap. Again, the Landlord has not submitted the video evidence to show that the person in the photos is standing, staring at the alleged gap and moving their head back and forth.

I do not agree with the assertion that there is nothing else to look at in the direction of the window of unit 102. The photos show there are other things the person in them could be looking at. Further, it is not clear to me why the person looking at an empty outside patio associated to unit 102 would be an issue.

I do not accept that the photos show the person loitering. It is normal that the person would be in the area given it is a common area for garbage and recycling. I cannot tell from the photos how long the person stays in the area.

I do not accept that the Tenant makes excessive noise in the garbage area. It is common sense that there would be noise in a garbage and recycling area and some noise should be expected. In the absence of more compelling evidence that the Tenant is purposefully making excessive noise, I am not satisfied the Tenant is.

In my view, the Landlord has not provided compelling evidence that the Tenant is loitering outside the window of unit 102, looking in the window of unit 102 or making excessive noise such that the Landlord had grounds to issue the Notice.

Given the above, I am not satisfied based on the evidence provided that the Landlord had grounds to issue the Notice. I cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is awarded reimbursement for the \$100.00 filing fee. The Tenant can deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

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 27, 2021

Residential Tenancy Branch