



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties confirmed the tenants did not serve the landlord with any documentary evidence. The landlord confirmed that he did not submit any documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package via Canada Post Registered Mail and is deemed sufficiently served as per section 90 of the Act. The tenants' evidence is excluded from consideration in this hearing as no attempt at service of the evidence was made to the landlord.

At the outset, both parties confirmed that neither had submitted a copy of the 1 month notice, however through extensive discussions, both parties had agreed to the contents during the hearing. Both parties confirmed the landlord served the tenants with a 1 month notice dated November 29, 2020 in person on November 29, 2020. The 1 month notice displays an effective end of tenancy date of December 31, 2020 and 7 reasons for cause selected by the landlord. They are:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

On this basis, the hearing shall proceed based upon the undisputed details of the 1 month notice.

Extensive discussions over 78 minutes resulted in the hearing being adjourned due to a lack of time. On this basis, both parties were advised that a new notice of adjournment would be sent to the addresses confirmed on the tenants' application for dispute for each party. Both parties were advised that no new evidence was to be submitted nor would any be accepted as the hearing has commenced.

On May 28, 2021 at 11am the hearing resumed with both tenants present. The landlord did not attend. A review of the Residential Tenancy Branch "notes" show that both parties were emailed copies of the adjournment notice and the interim decision on March 1, 2021. There is a notation on file that shows that an individual called in on May 27, 2021 and was verified as the landlord. The individual was provided with the conference call number and participant access code. The hearing was paused for 10 minutes to allow the landlord an opportunity to call in and participate. At 12 minutes past the start of the scheduled hearing the tenants were notified that the landlord's two remaining reasons for cause:

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk;

would be dismissed for lack of any details or submissions from the landlord. The remaining reasons for cause will be addressed below in this decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that on November 29, 2020, the landlord served the tenant with the 1 Month Notice dated November 29, 2020 in person. The 1 Month Notice sets out an effective end of tenancy date of December 31, 2020 and that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

Both parties confirmed that the listed details of cause state in part,

- The tenants have pet rabbits when no pets are allowed.
- The tenants are subletting the suite to others without the landlord's consent.
- The tenants, stepdad was using a torch with an open flame risking the other occupants and the landlord's property.

The landlord stated that the tenants are disturbing the other tenants/occupants of the property. The landlord stated that the tenant has engaged in illegal activity damaging the rental property by subletting to another person and having a open flame torch in the rental property. The landlord then clarified that his understanding of illegal activity was incorrect and that as such no illegal activity has occurred.

The landlord stated that there was an unreasonable number of occupants in the rental unit. The landlord stated that there are currently 7 persons residing in this 3 bedroom

duplex. The landlord stated that the original signed tenancy agreement allows for only a maximum of 4 persons to occupy this rental. The agreement specifically names 4 persons. The tenants dispute this claim arguing that there is not 7 persons residing in the rental unit. The tenants argue that there are only 3 persons living there. The tenants argued that the tenancy agreement allows for a maximum of 4 adults and two children to occupy the rental unit. The landlord failed to provide any further evidence regarding his claim of an unreasonable number of occupants living in the rental unit.

The landlord stated that the tenants have assigned/sublet the rental unit without permission of the landlord. The landlord did not provide any details of the tenants assigning or subletting the rental unit.

The landlords claim that the tenants have caused significant interference or unreasonably disturbed another occupant or the landlord. The landlords stated that the tenants have caused noise after hours disturbing other tenants. The landlords claim that on October 15, 2020 at 3am another tenant notified the landlord of a noise complaint. The landlord sent a text message to the tenant regarding the noise to ask them to stop. The landlord gave a warning to the tenant that if they did not stop a notice to end tenancy would be issued. The tenant disputed the landlord's claim arguing that police had attended on September 5, 2021, but not on October 15, 2020. The tenant stated that she had no knowledge of any complaints and that the landlord had only mentioned about a noise complaint on November 29, 2020.

Analysis

In an application to cancel a 1 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.

In this case, both parties confirmed that the landlords served the tenant with a 1 month notice to end tenancy for cause dated November 29, 2020 on November 29, 2020 in person. The landlords selected 7 different reasons for cause as listed on the notice.

During the hearing the landlords clarified that they had misunderstood the meaning of "illegal activity" for reasons #5 and #6 by subletting the rental and having an open flame on the property. After some discussions during the hearing the landlords now understand that these two reasons did not constitute "illegal activity" are dismissed.

The landlords' reason #7, the tenant assigned or sublet the rental unit without the landlords' written permission was also part in parcel of these details and as such is also dismissed without leave to reapply.

On the landlords' #1 reason for cause, the tenant has allowed an unreasonable number of occupants in the rental unit was clarified. The landlord has claimed that the tenant has 7 occupants living in a 3 bedroom duplex which should only hold 4 people. The tenant has disputed this claim stating that there are only a total of 3 people living in the unit. On this reason for cause, I find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlord. The landlord has failed to provide sufficient evidence to satisfy me that there are 7 persons occupying a rental unit with a maximum occupancy of 4 persons. This reason for cause listed by the landlord is dismissed without leave to reapply.

On The remaining reason for cause selected by the landlord, the landlord has claimed that the tenants have caused significant interference or unreasonably disturbed another occupant or the landlord. In this case, the landlord claims that the tenant have caused noise after hours disturbing other tenants. The landlord provided testimony that the tenants were given a warning letter that if they did not stop the tenancy was in jeopardy. The tenants disputed this claim arguing that the tenants did not receive any notice of a noise complaint nor a warning that if it continued the tenancy was in jeopardy. I find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlord. The landlord failed to provide any supporting evidence of noise complaints from other tenants; a warning to the tenants that their tenancy was in jeopardy due to the noise complaints or that their tenancy was in jeopardy. On this basis, this reason for cause is dismissed.

The landlord has failed to provide sufficient evidence to support his claims for the reasons for cause selected on the notice to end tenancy dated November 29, 2020. As such, the tenants application to cancel the 1 month notice is granted and the 1 month notice dated November 29, 2020 is cancelled. The tenancy shall continue.

The tenants are entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold \$100.00 from the landlord one-time from the next monthly rent upon receipt of this decision.

Conclusion

The tenants' application is granted.

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: June 3, 2021

Residential Tenancy Branch