



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, CNL, OLC, 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties participated in the teleconference. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns.

The parties were also informed 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 provided a solemn affirmation. All parties acknowledged the evidence submitted and 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.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to an order compelling the landlord to act in accordance with the Act, regulation or tenancy agreement?

Are the tenants entitled to an order that limits or suspends the landlords right to access the unit or site?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlords gave the following testimony. KL testified that the tenancy began on June 1, 2017. The monthly rent of \$1050.00 is due on the first of each month. KL testified that he served the tenants with a One Month Notice to End Tenancy for Cause on April 15, 2021 for the following reasons:

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;*

PN testified that the tenants dog bit her mother in law in September 2019 and also attacked RW. RW testified that the dog attacked him in September 2019 and felt like he was assaulted by the dog. RW testified that he avoided injury by keeping a chair between him and the dog until he was able to get into the landlord's suite. PN testified that the dog barks endlessly and has caused her issues when working from home during conference calls or video conferences. PN testified that the dog feces are strewn about the yard so much that landscaping companies refuse to conduct the work as it is an unsafe and unsanitary environment. The landlords request an order of possession.

NW gave the following testimony on behalf of the tenants. NW testified that they are extremely regretful for the biting incident in September 2019. NW testified that the dog has undergone extensive training since that time and hasn't had another occurrence. NW questions whether the dog really attacked RW or if the story was fabricated. NW testified that they have cleaned the feces each time that its been pointed out to them and that the dog does not bark endlessly as alleged. NW testified that the bite and alleged attack is dated from almost two years ago and that the only reason they were

issued a notice was when he voiced his displeasure to the landlords about their cocaine use. NW testified that he seeks to have the tenancy continue.

Analysis

When a landlord issues a notice under section 47 of the Act, they bear the responsibility to provide sufficient evidence to support the issuance of that notice. In this case, I find that the landlords failed to provide sufficient evidence that the tenants significantly interfered with, unreasonably disturbed, seriously jeopardized the health, safety or lawful right of other occupants or the landlord. I find that the landlord's complaint about the biting and attack to be dated and not sufficiently addressed in a reasonable and timely manner.

The landlord chose not to pursue the issue until almost two years later yet did not provide any testimony as to why they delayed their actions. The current complaints about the tenants' dog feces was that it was a nuisance for the landlords to clean the feces. I find that these complaints are trivial and do not meet the criteria to end a tenancy. The landlord's complaints about dog barking is a more serious issue and have provided some evidence, but not an amount to justify the end of the tenancy. I find that the landlord was unable to provide sufficient evidence that this tenancy should end. Based on the above, I find that the tenancy is to remain in effect, accordingly; I cancel the One Month Notice to End Tenancy for Cause dated April 15, 2021.

The tenants did not provide sufficient evidence to be granted an order to have the landlord comply with the Act, regulation or tenancy agreement or provide sufficient evidence to restrict or suspend the landlords right to access the unit or site, accordingly, those two issues are dismissed without leave to reapply.

The filing fee is a discretionary award usually issued by an Arbitrator after a party is fully successful after a full hearing on the merits of the application. As the tenants were only partially successful in this application, I decline to award the recovery of the filing fee to them.

Conclusion

The tenants' application to cancel the landlord's 1 Month Notice, dated April 15, 2021, is allowed. The landlord is not entitled to an order of possession. The tenancy continues.

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 21, 2021

Residential Tenancy Branch