



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, FF

Introduction

On March 29, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated March 24, 2021, (“the One Month Notice”). The Tenants also applied for the Landlord to comply with the Act, Regulation, or tenancy agreement. On June 6, 2021 the Tenants amended their application to include a monetary claim for money owed or compensation for damage or loss due to a loss of quiet enjoyment of their tenancy.

The Landlord and Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and 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 and Procedural Matters

On April 16, 2021 the Residential Tenancy Branch granted permission for the Tenants to use an accredited court reporter for an official transcript of this hearing. The Tenants were ordered to comply with all the requirements of section 6.12 of the Residential Tenancy Branch’s Rules of Procedure.

The Tenants provided a copy of the court reporters sworn affirmation to faithfully and accurately, and to the best of her skill and ability report evidence and everything said during a proceeding.

The parties were informed that the Tenants must provide all parties and the Residential Tenancy Branch with official copies of the transcript, and that transcripts may not be used for any purpose other than the proceeding, a review, or any court proceeding.

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 matter to determine is whether or not the Landlord has sufficient cause to end the tenancy. The Tenants' claim for compensation is dismissed with leave to reapply.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on May 1, 2017 and is on a month to month basis. Rent in the amount of \$973.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$475.00 and a pet damage deposit of \$475.00.

The Landlord served a One Month Notice to End Tenancy for Cause dated March 24, 2021 to the Tenants using registered mail. The One Month Notice has an effective date (the date the Tenant must move out) of April 30, 2021.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

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 or safety or lawful right of another occupant or the Landlord.*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the One Month Notice on March 29, 2021 within the required time period.

The Landlord provided testimony on the reasons why the notice to end tenancy should be upheld.

The Landlord provided testimony regarding an incident that occurred in the lobby of the apartment building on November 13, 2020. The Landlord stated that he was sitting in the lobby when the Tenant came in and started talking to him. The Landlord stated that he had previously sent the Tenant a text saying he is tired of bickering and for them to get past that behaviour. The Landlord stated that the Tenant called him a liar and idiot and use swear words. The Landlord stated that the Tenant got in his face and called him a "f**** joke". The Landlord stated that he said to the Tenant "at least I am not a dead-beat dad". The Landlord stated that the Tenant's wife told him that he has a child. The Landlord stated that the Tenant then kicked a bin. The Landlord stated that the Tenant went upstairs and returned holding a phone in the Landlords face. The Landlord provided digital video recording of incident which has no sound.

The Landlord stated that he was scared and called the police, who attended and said they would talk to the Tenant and tell him to avoid the Landlord and that the Landlord should avoid the Tenant.

The Landlord stated that he moved out of the building on December 15, 2020 but stayed on as a manager at the request of the building owner.

The Landlord provided testimony about a previous incident where the Tenant was observed unplugging decorations in the building. The Landlord testified about an incident on April 3, 2021 where the Tenant held a phone up to him to record him. The Landlord stated that there was a previous dispute resolution hearing regarding this incident and the notice to end tenancy that was served was cancelled.

The Landlord testified that he recorded a conversation with another occupant of the residential property on April 6, 2021 where the occupant states that the Tenant

approached him and asked for assistance with their issue with the Landlord. The Landlord states that the occupant is scared of the Tenant and did not want to be involved. The Landlord stated that the Tenant has been harassing other occupants to sign a letter against the Landlord. The Landlord provided video recordings of this incident.

The Landlord stated that the Tenants are demanding when they want something done.

In response to the Landlord's testimony, the Tenants testified that the police report regarding the November 13, 2020 incident is not consistent with the Landlord's testimony. The Tenants' submit that the police report is accurate and that no crime of assault has been committed. The Tenants provided a copy of the police report.

The Tenant stated that there is a lack of evidence that he is bullying or harassing the Landlord. He stated that the Landlord has been a willing participant, and this does not amount to harassment. The Tenants provided a photograph taken on December 15, 2020 of a notice to all tenants stating that the Landlord was moving out of the building but will be staying on as manager and will be coming by regularly.

The Tenant submitted that the Landlord has testified about the same evidence from a previous hearing where the notice to end tenancy was set aside. The Tenant stated that it is not relevant. The Tenant also pointed out that the out that Landlords evidence about incidents that occurred after the One Month notice was issued are not relevant to the reasons provided in the Notice.

The Tenant, Ms. K.L. testified that the Landlord has blamed them for multiple things and has been surveilling her husband. She stated that they are feeling powerless against the Landlord who is not respecting their rights under the Act and for privacy.

The Tenants stated that the Landlord did not look scared during their interactions.

The Landlord was asked to explain why he issued the One Month Notice more than four months after the incident on November 13, 2020. The Landlord replied that he had planned on not being there and the only way he would stay working at the building was if the notice to end tenancy was issued. He stated that he wanted to feel safe at the building.

The Landlord stated that he only reviews the video recordings taken on the property when there is an incident.

Analysis

In the matter before me, the Landlord has the burden of proof that the reasons for ending the tenancy in the Notice are valid and sufficient. Based on the evidence and testimony before me, and on a balance of probabilities I make the following findings:

I find that the relevant evidence before me is the incident that occurred on November 13, 2020 up to the date the One Month Notice was issued. The previous incident regarding decorations was considered at an earlier hearing. Incidents occurring after March 24, 2021, did not form the basis of the Notice.

With respect to the incident that occurred on November 13, 2020, I find that both the Tenant and the Landlord bear some responsibility for the incident. It is clear to me that due to their history there is animosity between the parties. The Tenants feel that the Landlord is not respecting their rights and the Landlord feels that the Tenants are demanding and abusive.

I find that the Tenant engaged the Landlord in a conversation and the matter escalated. I find that the Landlord's comment to the Tenant "*at least I am not a dead-beat dad*" is an aggravating factor that made the incident worse. While I find that the Tenant kicking the bin and returning to record the Landlord by getting in his face is not appropriate behavior, I find that the behavior occurred in the heat of the moment after a very inflammatory comment was made that was intended to arouse angry feelings.

I have also considered the Landlord's statement regarding the four-month delay in serving the One Month Notice. The Tenants' evidence suggests that the Landlord's decision to move out of the building and stay on as manager was made in December 2020. I find that this evidence is somewhat at odds with the Landlord's statement that the delay was because it was the only way he would agree to stay on, and he wanted to feel safe.

I find it is reasonable to expect that a Landlord who feels a Tenant presents a legitimate safety concern would not wait 4 months to take action. I find that the disturbance on November 13, 2020 was not unreasonable due to the aggravating factors.

I find that the Landlord has provided insufficient evidence to support his reasons to end the tenancy.

The Tenants' application to cancel the One Month Notice is successful. The One Month Notice to End Tenancy for Cause, dated March 24, 2021 is cancelled.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenants to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenants' application is successful. The One Month Notice issued by the Landlord dated March 24, 2021, is cancelled. The tenancy will continue until ended in accordance with the Act.

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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: July 21, 2021

Residential Tenancy Branch