



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Both parties agree that the landlord was served with this application for dispute resolution via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*.

The tenants testified that they did not serve the landlord with their evidence.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the “Rules”) states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the tenants did not serve the landlord with their evidence, all evidence submitted by the tenants, except the One Month Notice to End Tenancy for Cause, are not admitted for consideration. I admit the One Month Notice to End Tenancy for Cause as both parties agree that they have a copy of it and it is required for this hearing to proceed. As both parties have copies and both parties are aware that this hearing relates to the One Month Notice to End Tenancy for Cause, I find that neither party is prejudiced by its inclusion.

Both parties agree the landlord served the tenants with the landlord’s evidence in the tenants’ mailbox on September 2, 2021. The tenants testified that they received the landlord’s evidence on September 2, 2021. I find that the landlord’s evidence was served on the tenants in accordance with Rules 3.15 of the *Rules* and section 88 of the *Act* and is admitted for consideration.

Issue to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. If the tenants’ application is dismissed or the landlord’s Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants’ and landlord’s claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began some time ago, likely in 2011 and is currently ongoing. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenants to the landlord.

Both parties testified that the landlord personally served the tenants with a One Month Notice to End Tenancy for Cause (the "One Month Notice") dated April 30, 2021 on April 30, 2021. The One Month Notice was entered into evidence and states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The details of cause section of the One Month Notice states:

- Multiple complains regarding the upstairs tenants laundry being tampered with (washer /dryer being turned off mid cycle).
- Multiple complaints of upstairs tenants being cused at and threatened.

Both parties agree that the subject rental property is a house with an upper and lower suite. The upper and lower suite have shared laundry in a common space. The tenants in this application for dispute resolution live in the lower suite. Both parties agree that the yard/garden is a common space.

The landlord testified that the shared laundry has been a source of contention between the upper and lower tenants since 2019 and she has continuously attempted to reduce the friction between the upper and lower tenant by instituting a laundry schedule for the upper and lower tenants so that they do no do laundry on the same day. The landlord testified that this has not worked, and she continuously receives complaints from both the upper and lower tenants about the breach of the laundry schedule and tampering with loads of laundry. The landlord entered into evidence complaints from both parties.

Both parties agree that in 2019 the lower tenants stored their laundry in the shared laundry room. Both parties agree that the lower tenants moved their laundry out of the shared space on the request of the landlord in 2019.

Both parties agree that in 2019 tenant M.J. repeatedly turned off the upper tenants' laundry. Tenant M.J. testified that the upper tenants would fill the washing machine right up to the lid and that because it was too full, the washing machine made a terrible banging sound with frightened her grandson. Tenant M.J. testified that on one such occasion a tenant from upstairs threatened to beat her up if she turned off his laundry again. Both parties testified that Tenant M.J. informed the landlord of the above incidence. Both parties agree that the landlord told tenant M.J. to stop turning off the

upstairs tenants' laundry. Both parties agree that M.J. stopped turning off the upstairs tenants' laundry at that time.

The landlord testified that while the above major issues were resolved in 2019 she has continued to receive complaints from both the upper and lower tenants and that while she has tried to assist the upper and lower tenants in co-existing, the upper and lower tenants do not seem to be able to live at the same house in harmony. The landlord testified that the upper tenants complain about the lower tenants more, but whenever she informs the lower tenants of the upper tenants' complaints, the lower tenant verbally complain about the activities of the upper tenants.

The landlord testified that both parties accuse the other of doing laundry on days that they are not permitted to do laundry. The landlord testified that she does not know who is fabricating and who is telling the truth or if both the upper and lower tenants are the problem. The landlord testified that since it is clear that both parties cannot live in the same house, she offered the tenants an opportunity to rent the entire house, but due to financial constraints, they could not. The landlord testified that she initially issued a One Month Notice to both the upper and lower tenants but rescinded the One Month Notice to the upper tenants because they agreed to rent the entire house if the lower tenants moved out.

The landlord testified that the straw that broke the camel's back and led to the issuance of the One Month Notice was the upper tenants' theft of the lower tenant's cat. The tenants testified that their cat went missing and they put up posters. Both parties agree that the upper tenants let the cat into the upper unit, fed it, and did not return the cat for over a week until the landlord instructed them to do so.

The landlord testified that in addition to the above, the landlord received new complaints from the upper tenants that the lower tenants turned off the laundry again mid cycle. The new complaints were entered into evidence.

The tenants testified that since 2019, when the landlord told them not to turn off the upper tenants' laundry mid cycle, they have not turned off the upper tenants' laundry and try to avoid the upper tenants. The tenants testified that the upper tenants are the ones who do laundry on the wrong days and that when they are approached about it they say that it's no big deal and that the lower tenants can use one of their days but when the lower tenants go to use one of the upper tenants laundry days, the upper tenants makes a huge deal about it and call the landlord. The tenants testified that they

try not to complain about every little thing to the landlord, but the upper tenants complain constantly.

The landlord provided testimony regarding debris and materials stored by the tenants outside and regarding a lock on the garage door. I decline to include this testimony in this decision as the One Month Notice does not mention the debris and materials or the lock as a reason for ending this tenancy and so testimony on these points is not relevant in deciding whether or not to uphold the One Month Notice. It is not permissible to add reasons to end the tenancy that were not included on the One Month Notice, as the tenants could not reasonably have prepared for or anticipated addressing those reasons in this hearing. I will also not discuss evidence on the above testimony submitted by the landlord.

The landlord testified that the upper tenants have complained that the lower tenants threaten them and make them feel that they cannot use the outside space or do laundry as per the laundry schedule. The landlord testified that one of the tenants in the upper streets is transgender and felt threatened by tenant M.J. when tenant M.J. threatened to call the police.

The landlord entered into evidence an email from the upper tenant described above dated April 24, 2021 which states in part:

I have a complaint about the old lady that lives in the basement. She has seen me around the house doing laundry. We even bumped into each other once but one day when I was helping [the upper tenant] do yard work, in the backyard, she started cursing at me and threatened to call the cops on me. She kept saying that she has never seen me before and should stay out of her backyard otherwise she would call the cops on me. As a brown transgender woman, being threatened with having the cops called on me makes me feel unsafe and makes me want to leave.

Tenant M.J. testified that the upstairs tenant has many different roommates who come and go, many for very short durations. Tenant M.J. testified that she was in the yard and someone she did not know was also looking around in the yard. Tenant M.J. testified that she asked the person who they were and what they were doing, and they responded, "mind your own business". Tenant M.J. testified that she did not know this person lived in the upper unit and that she told the person that she would call the police if they didn't leave because she didn't believe they belonged there. The tenants testified that they do not curse at the upper tenants.

The landlord testified that only one of the people living in the upper unit is a tenant and that the tenant has roommates who come and go and that she does not always know when new roommate move in or out.

The landlord did not provide other examples of the alleged threats.

The landlord testified that she does not live at the subject rental property and does not know who is telling the truth and who is lying but it is clear that the upper and lower tenants cannot continue living in the same house. The landlord testified that she does not have personal issues with the tenants and gets along well with them

Analysis

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Pursuant to Rule 6.6 of the *Rules*, the onus to prove the reasons to end tenancy set out in the One Month Notice is on the landlord. The landlord testified that she did not know who was telling the truth about the laundry problems. The tenants testified that they did not stop the upper tenants' laundry and that it is the upper tenants who cause the laundry issues.

I find that the landlord has not proved, on a balance of probabilities, that the tenants are the cause of the laundry problems as she herself did not know. The landlord has not

met the burden of proof to evict the tenants for the laundry issues.

I find that the incident with the roommate of the upper tenant described in the April 24, 2021 email is not serious enough to evict the tenants. I find, on a balance of probabilities, that a lack of communication between the upper and lower tenants led to confusion as to who was living at the subject and the altercation in question. I find that the above incident likely disturbed the roommate, but I find that the disturbance was not significant enough to evict the tenants. The tenants are however, cautioned to be respectful to the upper tenant and roommates.

I find that the landlord has not proved, on a balance of probabilities, that the verbal altercations between the upper tenants and the lower tenants are caused by the lower tenants or are significant enough in nature to unreasonably disturb the upper tenants.

Pursuant to my above findings, the One Month Notice is cancelled and of no force or effect.

I also note that one of the precipitating events that led to the issuance of the One Month Notice, was the action of the upper tenant in holding the lower tenants' cat, as such the tenants should not be penalized by the actions of the upper tenant.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy will continue 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: September 13, 2021

Residential Tenancy Branch