



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, CNC, FFT

Introduction

This hearing dealt with the tenants' 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 to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover their 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 were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlord with the notice of hearing package via Canada Post Registered Mail on August 19, 2021. Both parties also confirmed the tenants served the landlord with their submitted documentary evidence via Canada Post Registered Mail on September 13, 2021. Both parties also confirmed the landlord served her submitted documentary evidence to the tenants in person on September 9 or 10, 2021 and again on September 14, 2021. However, it was noted that there was 2 missing documentary evidence files. Discussions with both parties resulted in the landlord agreeing to proceed with the hearing without them. On this basis, I find both parties have been sufficiently served as per section 71 of the Act.

Preliminary Issue(s)

At the outset, the tenants' application was clarified. The tenant requested an order for the landlord to provide services or facilities required by law. The tenants request the reinstatement of laundry amenities after agreeing to terminate them and be compensated by reducing rent by \$50.00. It was noted that this request was unrelated to the tenants' primary request to cancel the notice to end tenancy for cause. Both parties were advised that if there was time to hear this issue the decision would include this request, if not the tenant's request was to be dismissed with leave to reapply as this was an unrelated issue as per Rule 2.3 of the Rules of Procedure.

At the conclusion of the hearing the tenant's request for the landlord to provide laundry services was discussed. Both parties confirmed that in an effort to move forward the tenants agreed with the landlord to terminate the laundry facilities and that the tenants would be credited \$50.00 off of the monthly rent. The tenants requested that laundry facilities be reinstated. I find that this termination was done at the consent of both the landlord and tenant and as such an order for the landlord to reinstate laundry services is not appropriate. Both parties are encouraged to enter into discussions over this issue. This portion of the tenant's request is dismissed without leave to reapply.

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 agreed that on July 30, 2021, the landlord served the tenant with the 1 Month Notice dated July 30, 2021. The 1 Month Notice sets out an effective end of tenancy date of August 31, 2021 and that it was being given as:

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

The details of cause state:

Ongoing battle with upstairs tenant for months. Fighting over parking when spots were not assigned and there was plenty of space. Continual texts to landlord without cause or needing repairs. Abusive language with other tenant. Notes of a harassing + extremely mean + rude nature to other tenant. Possible vandalism of other tenants vehicle immediately following reprimand by landlord and continued slander of other tenant online creating a very volatile living atmosphere for all tenants.

[reproduced as written]

The landlord claims that the named tenants are in constant conflict with other tenants via name calling and notes causing a toxic atmosphere for all parties.

The tenants argued that both parties were equally involved in the name call and passing of notes. The tenants stated that since the 1 month notice was served no further altercations have occurred between the two parties. The tenants also argue that the landlord has failed to provide any form of written caution/warning and that the service of the 1 month notice was the first written notice to the tenants.

The landlord stated that the tenants have through their social media platform have engaged in name calling and abusive language with the other tenants. The landlord stated that this was like “children arguing”.

The tenants argued that the comments on the social media platform do not specify a tenancy or any of the named parties.

The landlord argued that excerpt from the tenants’ social media platform is missing the comments portion which the landlord stated used abusive language directed at the upstairs tenant.

The tenants argued that the other upstairs tenant began the harassment.

The landlord stated that she provided both sets of tenants verbal warnings to stop.

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 the landlord served the tenant with a 1 month notice to end tenancy for cause dated July 30, 2021.

The landlord has presented evidence that the tenants have been in a dispute and have been abusive to the other upstairs tenants. The landlord has provided undisputed affirmed evidence that the tenants have been “name calling and leaving abusive notes” with the other tenants. The landlord stated that both parties have been given verbal warnings to stop, but that the landlord feels the tenants continued with their behaviour.

The tenants argue that the landlord has targeted them and favor the other tenants in this situation. The tenants stated that the other tenants have not received a notice to end tenancy. The tenants argue that they are being disturbed by the upstairs tenants.

The tenants also argued that no written notice has been given by the landlord to the tenants to correct the situation within a reasonable time.

Section 47 of the Act states in part that a landlord may end a tenancy by giving notice to end the tenancy if:

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

I also note that section 47 (1) (h) also states that a landlord may end a tenancy by giving notice to end the tenancy if a tenant failing to comply with a material term of the tenancy and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

In this case it is clear that the landlord has received numerous complaints from each set of tenants regarding the other. The issue is “name calling” and “abusive language”. The landlord states that this issue continues with both parties despite her verbal warnings. Both parties confirmed that for the last month prior to the scheduled hearing date that there have been no further ongoing issues between tenants, however the landlord argues that based on the tenants conduct it is only a matter of time for the issues between tenants to continue. However, I find in this case based upon the undisputed evidence of both parties that no written warnings were given by the landlord cautioning the tenants that their behaviour/actions could result in the ending of their tenancy for cause. On this basis only, do I cancel the landlord’s 1 month notice dated July 30, 2021. The tenancy shall continue. Let this decision serve as notice to the tenants that their behaviour/actions, if they continue could result in the landlord issuing a new notice to end tenancy for cause. I also note for the record that it is not a requirement for the landlord to issue notice(s) to end tenancy for both sets of tenants.

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

Conclusion

The tenants' application is granted. The 1 month notice dated July 30, 2021 is cancelled. The tenancy shall continue.

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 28, 2021

Residential Tenancy Branch