



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, PSF, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. A Monetary Order for compensation - Section 67;
3. An Order for the provision of services and facilities - Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord states that despite receiving late evidence from the Tenant the Landlord does not require an adjournment.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the matter of compensation or the provision of services and facilities is not related to the matter of whether the tenancy will end, I dismiss these claims with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started November 1, 2017. At the outset of the tenancy the Landlord collected \$250.00 as a security deposit. Rent of \$500.00 is payable on the first day of each month. The tenancy agreement addendum sets out that for the rent being discounted down from \$600.00 the Tenant will maintain their personal use of the water. The Landlord served the Tenant with a one month notice to end tenancy for cause dated September 27, 2021 (the "Notice"). The Notice sets out that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The Notice details three incidents from October 2019 to September 20, 2020, and one incident on January 25, 2021. The Notice sets out that on October 3, 2019, the Tenant assaulted the neighbour on the neighbour's property and that the next day the Tenant admitted to that assault while on the access road. The Notice sets out that on September 20, 2021, the Tenant called the neighbour a pedophile and later spun the tires causing rocks to hit the neighbour's house.

The Landlord states that they do not know if the neighbour has been charged with anything. The Landlord states that the incidents from 2019 and 2020 are related to the last incident in September 2021 where the Tenant failed to maintain the water intake box leading to the neighbour being without water for a week leaving the Landlord to remedy the situation. The Notice sets out that the Tenant also defamed the neighbour's character causing the neighbour to be ostracized in the local community.

The Landlord states the land on both properties is owned under one title by the Landlord, that the Tenant and the neighbour are each under separate tenancy agreements with the Landlord, that each have their own yard and driveway and that the properties are separated by an easement road that is also accessed by a few of the other neighbours. The Tenant and the neighbour share the same water source from a

creek. The Landlord argues that the neighbour is an occupant of all the property along with the Tenant.

The Landlord states that on January 25, 2021, the neighbour informed the Landlord that they had no water. The Landlord states that back in 2019 due to a dispute between the Tenant and the neighbour the Tenant did not allow the neighbour to maintain the water supply to the neighbour's house. In July 2019 the Landlord and the Tenant entered into an oral agreement that the Tenant would maintain the neighbour's water supply as long as the neighbour stays off the Tenant's property. The Landlord states that the Tenant failed to maintain the water supply leading to the loss of the neighbour's water supply in January 2021 and that when contacted by the Landlord on January 25, 2021, the Tenant refused to remedy the problem. The Landlord states that at that time the Landlord was subjected to verbal abuse by the Landlord. The Landlord states that this verbal abuse has occurred on multiple occasions, but the Landlord cannot recall any of the dates for these incidents. The Landlord states that on January 31, 2021 the Landlord again went to the property to maintain the water and while the Landlord was on the front yard the Landlord was subjected to the Tenant's yelling and screaming. The Landlord cannot recall exactly why the Tenant was behaving this way but believes it had something to do with the water maintenance. The Landlord states that the Tenant was given a warning letter at the time and does not recall any further abuse until September 2021 when the Tenant informed the Landlord that the Landlord could not enter the yard without notice to the Tenant. The Landlord states that at this point the Notice was given to the Tenant.

The Tenant's Advocate submits that the Landlord has left out very relevant context to the dispute between the Tenant and the neighbour. The Advocate submits that the neighbour exposed themselves to the Tenant and the Tenant's family in 2019 and was subsequently criminally charged with inciting fear as a result of the neighbour's act. The Advocate submits that the neighbour pled guilty and is currently under a one year no contact order with the Tenant. The Advocate submits that the police are involved with

the situation including the neighbour's bail conditions and that the neighbour cannot come onto the Tenant's property. The Tenant states that in January 2021 the Tenant was frustrated with the Landlord's actions in "gaslighting" the Tenant about the neighbour and kept saying that the Tenant's allegations about the neighbour were untrue. The Tenant states that they have never sworn, yelled or screamed at the Landlord. The Tenant states that in September 2021 the Landlord was bullying the Tenant. The Landlord states that they did not know about the criminal matter until September 2021 after which the Landlord never suggested that the Tenant was being untruthful.

Analysis

Section 47(1) (d) of the Act provides 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, or
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 1 of the Act provides that "residential property" means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

While it may be that the Tenant and the neighbour shared common property from the onset of the tenancy in their joint access to the water supply for maintenance purposes, the evidence is that this is the only area that was shared. Although the two tenancies

are located on the same parcel of land, there is no evidence of any other common property shared between the Tenant and the neighbour, there is an access road separating the two properties, each unit on the parcel of land has its own yard and driveway and there is no evidence that the Tenant has use of or access to any of the property being leased to the neighbour.

Based on the Landlord's evidence that the water source area of the property was no longer accessible to the neighbour after an oral agreement in July 2019, I consider that after this date the Tenant and the neighbour had distinct residential properties that were not joined in any way. Accordingly, I consider that any evidence of the Tenant disturbing the neighbour going forward is not evidence of disturbance of an occupant of the residential property. Even if the Tenant acted to disturb the neighbour before this agreement given the remoteness in time and as there was no action taken at that time, I consider that the incident does not raise to the level required to end the tenancy now. Finally, defamation is a public matter and not a matter under the jurisdiction of the Act. For these reasons I find that the Landlord has not substantiated that the Tenant disturbed or interfered with another occupant of the residential property.

Although the Landlord argues that the Tenant failed to maintain the water supply to the neighbour as agreed, the reasons for the Notice do not include any breach of the tenancy agreement, and most particularly a breach of a material term, if such an oral agreement could be seen as a material term. Further there is no evidence of any serious jeopardy to the Landlord or the landlord's property caused by a failure to maintain the water supply. For these reasons I find that the Landlord has not substantiated that the Tenant caused any serious jeopardy.

Given the well supported evidence of the neighbour's behavior leading to the recent criminal charges, and as the Tenant's evidence of the Landlord's denial of the neighbour's actions holds a ring of truth, I find that any behavior exhibited by the Tenant towards the Landlord was provoked by the Landlord. For this reason, I find that the

Landlord has not substantiated that the Tenant unreasonably disturbed the Landlord. While there is evidence that the Tenant attempted to stop the Landlord from accessing the water source, I again consider the Tenant's frustration with the Landlord's behavior in denying the acts and behavior of the neighbour. Even if this does support a disturbance of the Landlord as this is the only incident of disturbance, I find that the disturbance is not significant enough to end the tenancy.

As none of the reasons for the Notice have been found valid, I find that the Tenant is entitled to a cancellation of the Notice and the tenancy continues. As the Tenant has been successful with this claim I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 16, 2022

Residential Tenancy Branch