



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, LRE, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and for orders to have the landlord provide services and facilities required by law and to restrict the landlord's access to the rental unit.

The hearing was conducted via teleconference and was attended by one of the tenants and her agent; the landlord; his agent; and a witness.

While the landlord acknowledged that the service of their evidence was late the tenant confirmed that they had reviewed the material and were prepared to respond to it. As such, I have allowed the landlord's late evidence.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

I also note the Application for Dispute Resolution submitted names three tenants DG, MB, JB. However, the portion of the tenancy agreement submitted into evidence names only tenants DG and JB. As MB is not listed as a tenant on the tenancy agreement and the tenant confirmed that he had not been listed as a tenant. As a result, I find that MB is not a party to the tenancy and I amend the application to exclude MB as a tenant.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenants' claim to suspend or set conditions on the landlord's right to enter the rental unit or to provide services and facilities required by law. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants' other claims are unrelated in that the basis for them rest largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss the tenants' claim for suspending or setting conditions on the landlords' right to access the rental unit and an order to provide services and facilities required by law. I grant the tenants leave to re-apply for these other claims.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Act*.

Should the tenants fail to succeed in cancelling the One Month Notice to End Tenancy for Cause, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The tenant submitted the tenancy began on August 29, 2010 as a month to month tenancy for a current monthly rent of \$840.00 due on the 1st of each month with a security deposit of \$415.00 paid.

The tenant submitted into evidence a copy of a One Month Notice to End Tenancy for Cause issued by the landlord on November 25, 2021 with an effective vacancy date of December 31, 2021 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Under the Details of Event(s) section of the Notice the landlord wrote:

"The tenants upstairs keep burning some material or substance on a daily basis at all times of day to stink up the stairwell (with no windows, located in the middle of the house) that leads to the suite of the tenant living downstairs in order to disturb that tenant.

They have been asked repeatedly to stop but refuse to do so and were given a notice of final warning on November 22, 2021 but will not stop. This harassment is consistent with many previous actions taken by the tenants upstairs for the last year to disturb the tenant living downstairs.

This is the second eviction notice served to them this year. The first was for refusing to stop smoking cigarettes in the same stairwell in order to disturb the tenant living downstairs.”

The landlord submits that the tenants had been smoking in the stairwell and causing other disturbances to the occupant in the rental unit below the tenants’ unit. Both parties agreed that the landlord had issued a One Month Notice to End Tenancy for Cause, previously for the smoking issue and other disturbances. The tenants disputed that notice but that the parties resolved the issues prior to the hearing and so neither party attended that hearing.

The landlord submits that while they finally convinced the female tenant to stop smoking in the stairwell because of the landlord’s insurance policy, they assert that the tenant is now burning some unknown substance on a constant and daily basis that is causing discomfort to the other occupant in the residential property.

Both parties acknowledge that the relationship between the tenants and the downstairs occupant is currently strained and that the strain has expanded to the relationship between the landlord and the tenants.

The landlord asserts that since they discussed the issues previously the tenants have begun to burn an unknown substance that smells like a combination of animal dung and marijuana. The landlord’s agent testified that he has been called by the landlord to investigate the odour at all hours of the day and night.

The landlord’s agent further testified that when he has gone to investigate, he has gone to the basement unit and found the foul smell so bad that he has felt physically sick. Both the landlord’s agent and the occupant of the basement unit testified that the tenants burn this substance at all times of the day and night.

However, while the landlord’s agent has investigated the odour as far as attending the basement unit, he has not investigated by going into the upstairs unit to find the source of the odour.

Both the landlord’s agent and basement occupant provided other testimony regarding the relationship between the tenants and themselves. They both submitted that the tenants were unreasonable and will not allow any discussions on the issues without raising their voices and becoming argumentative.

The tenant testified that on October 11, 2021 they smelled an odour in the building and asked the basement occupant if he was the cause or knew about it. When he denied any odour the tenants called the fire department. The tenant testified the fire department, in the end, determined the cause of the odour was incense that the basement occupant was burning. The tenant did not provide any corroborating evidence of the fire department’s conclusions.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, 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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, this burden rests with the landlord to establish whether or not they have cause to end the tenancy.

Despite the testimony of both the landlord's agent and the landlord's witness that the tenants are argumentative and difficult to deal with, these issues are not identified on the Notice to End Tenancy as causes to end the tenancy and, as such, I find they are not helpful in the determination of the cause identified.

For the most part the landlord and their witness have provided verbal testimony about an odour that is so objectionable it can cause a person to be made sick from it. They also submitted that this burning smell happens on a very constant basis. However, the landlord has not provided any evidence at all as to what the smell is and/or how it is being produced by the tenant.

While it is clear the tenants and the basement occupant do not get along, I am not satisfied, on a balance of probabilities, that the landlord has provided sufficient evidence to establish the tenant has caused any of this unknown odour. As a result, I order the Notice to End Tenancy issued on November 25, 2021 is cancelled and of no force or effect.

However, I caution the tenant that if they are causing this odour to occur and they continue to do so, after the date of this decision, and if the landlord can obtain sufficient evidence to establish that they are causing it, the landlord may issue a new Notice to End Tenancy for Cause and be successful in ending the tenancy.

Conclusion

For the reasons noted above, I grant the tenant's Application and order this tenancy to continue until ended in accordance with the *Act*.

As the tenants are successful in their Application, I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of

the filing fee paid by the tenant for this application. I order the tenant may retain this amount from one future rent payment, pursuant to section 72(2)(a).

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: February 15, 2022

Residential Tenancy Branch