



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 tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate.

At the outset of the hearing the named personal respondent said they are an employee of the corporate landlord and provided the correct name of the landlord that should be named in the style of cause. The style of cause has been amended accordingly.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on September 15, 2021. Monthly rent is \$1,100.00 payable on the first of each month. The rental unit is a basement suite in a detached home with two suites.

The rental property was purchased by its current owner in November 2021 and the respondent corporate landlord was retained to manage the property. The landlord entered a tenancy agreement with an occupant for the upstairs suite who took possession in December 2021.

The landlord submits that since taking possession of the suite the upstairs occupants have made multiple complaints about the level, frequency and type of noise heard from the tenant's unit. Based on the complaints from the upstairs occupants the landlord issued a warning letter dated January 4, 2022. The landlord says that the complaints from the upstairs occupants continued and they issued a 1 Month Notice dated February 2, 2022. The parties agree that the tenant was served with the notice on February 7, 2022 and they filed their present application to dispute the notice on February 16, 2022.

The landlord indicated on the 1 Month Notice the reason for the tenancy to end is that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord submits that there have been ongoing noise complaints by the upstairs occupant which has culminated in the occupants giving notice to end their tenancy by an email on April 30, 2022. A copy of the email correspondence with the occupant was entered into evidence. The landlord also submitted a typewritten, unsigned document dated March 21, 2022 from the upstairs occupants of their complaints.

The agent of the landlord testified that they have not personally attended at the rental property and have not observed the tenant's behaviour first-hand.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The parties agree that the tenant was served with the 1 Month Notice on February 7, 2022 and filed their application to dispute on February 16, 2022, therefore I find the tenant was within the statutory timeline to dispute the 1 Month Notice.

When a tenant applies to dispute a notice the landlord bears the burden of proof. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant.

In the present case, based on the totality of the evidence before me, I find the landlord has not met their evidentiary onus to establish cause for ending the tenancy. I find that a handful of correspondence from the neighbor complaining about the behaviour of the tenant to be insufficient to establish there is merit to the complaints or that any incidents of noise was to a degree or frequency that could be characterized as unreasonable.

I place little probative weight on the written complaints when the complainant is not called as a witness to provide testimony or be cross-examined. I further note that the documentary materials consist primarily of subjective observations and perpetuating rumors from unnamed neighbors about the tenant and their activities. I accept the undisputed evidence of the landlord's agent that they have never attended at the rental property and have not witnessed any of the issues first-hand.

The burden of proof rests with the landlord to show that the behaviour of the tenant was such that it transcended the ordinary noise level expected from a reasonable neighbor. I find that there is insufficient evidence in support of the landlord's position. I find that the few materials included in the documentary evidence to consist of subjective observations from parties that were not called to give testimony at the hearing. I do not find the correspondence from the tenant to be sufficient evidence that their conduct has

been to a level that could reasonably be characterized as frequent or ongoing. I do not find the evidence of the landlord to demonstrate that the conduct of the tenant has been so beyond the ken of a reasonable occupant that it gives rise to an end of the tenancy.

I do not find that individually or cumulatively the tenant's actions have given rise to cause to end this tenancy. Accordingly, I allow their application and cancel the 1 Month Notice of February 2, 2022.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause dated February 2, 2022 is successful. The notice is cancelled and of no further force or effect. This tenancy continues until ended 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: May 24, 2022

Residential Tenancy Branch