



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated February 25, 2022 ("One Month Notice").

The Tenant, her legal advocate, D.K. ("Advocate"), and two agents for the Landlord, T.T. and K.P. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony; however, the Agent, T.T., was the primary contact in this matter, and provided testimony in the hearing.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Agent said she had received the Tenant's Notice of Hearing documents, but not any evidence. The Tenant confirmed that she had not submitted any evidence for this proceeding. Further, the Tenant said she had received the Landlord's registered mail; however, she said that her position is that the Landlord has failed to provide sufficient evidence to meet their burden of proof.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on February 1, 2022, and was to run to January 31, 2023, and then operate on a month-to-month basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$2,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,000.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the Tenant's security deposit in full.

The Parties both provided copies of the One Month Notice that the Landlord served to the Tenant. They agreed that the One Month Notice was signed and dated February 25, 2022, and that it has the rental unit address. The One Month Notice was served via email and by posting a copy to the rental unit door on February 25, 2022, with an effective vacancy date of March 31, 2022. The Parties agreed that the One Month Notice was served on the grounds that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the Landlord's property at significant risk.

During the hearing, the Parties made it clear that this eviction notice arose, because of an incident that occurred on February 17, 2022. They agreed that on this date in the evening, two males walked up the driveway, one with a baseball bat and one with a baton, and that they broke two windows of the residential property – the garage and a bedroom window of the rental unit. They then sprayed bear spray into the garage and ran back down the driveway to a waiting car. This incident was captured on a security camera, although the males' identity was not clear.

The Tenant called the police, and the Landlord said that multiple police and the fire department representatives attended.

The Agent said she is afraid that something like this will happen again, unless the Tenant moves out. The Agent noted that another tenant in the residential property is a pregnant woman who is due to give birth at the end of July 2022. The Landlord is fearful that something might happen to this woman and/or the baby, if there is another such attack.

The Advocate said:

It's probably more factually based that the onus is on the Landlord here to show compelling evidence that there is a cause for eviction. From a legal perspective, the Tenant did not permit this to happen. In fact, in the Landlord's evidence package, they conclude that the Tenants were also victims here. I understand the overall concern. And the safety concerns are important for all, but repeatedly saying 'it's shocking', doesn't meet the onus.

The Landlord says she has never experienced anything before and that "it is a safe neighbourhood", yet there was a bear spray incident at the school a couple blocks away. The increasing level of unsafeness in the neighbourhood would suggest that it is not so safe. There is no crystal ball of when a new bear spray incident will happen, so to evict because of something that may happen in the future is over-wrought. It is a very, very specific thing in this case. Is there sufficient evidence? The CCTV footage shows two teenagers come in, run to the unit, smash windows and really quickly run back – almost like kids playing a prank. If that's happening in the neighbourhood, that may or may not happen if the Tenant is or is not in the suite. This doesn't go toward evidence that the Tenant permitted this to happen.

To summarize the Landlord didn't provide sufficient evidence to demonstrate a cause for eviction.

The Agent said:

I want to echo back [the Advocate's] statement: the neighbourhood is peaceful and safe. There was never anything like this before. The school is in [another jurisdiction], our house is in [this jurisdiction], I'm just showing that the teenagers came back to the school - not that this has happened before - it's two different incidents. It is a safe neighbourhood. The attack is very shocking and we don't want anything to happen to the house anymore – cleaning, property damage, and a pregnant woman and the baby's coming - nothing can happen to the baby

or the new mom or anyone else. It's rational for [the Tenant] to find a new place to move on, and for her family it's safety, as well.

Also , it was not a random attack. The person who drove the car stopped outside the house, so it was a targeted attack.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

. . .

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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.

In this case, the Landlord alleged that the Tenant or a person permitted on the property

by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the Landlord's property at significant risk. I find that the Landlord has not produced evidence that the Tenant's behaviour significantly interfered with or unreasonably disturbed anyone in the residential property or the Landlord.

Further, I agree with the Advocate, that the Tenant did not "permit" these males to be on the property. There is no police finding before me that indicates the Tenant had anything to do with instigating this incident. As such, the grounds the Landlord relied on for serving the One Month Notice were not applicable to the Tenant in this set of circumstances.

When I consider all the evidence before me overall, I find that the Landlord has not provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. As a result, I grant the Tenant's Application to cancel the One Month Notice, and I find it is void and unenforceable.

Conclusion

The Tenant is successful in her Application to cancel the One Month Notice, as the Landlord did not provide sufficient evidence to support their burden of proof on a balance of probabilities.

I cancel the One Month Notice and find that it is void and unenforceable.

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: June 28, 2022

Residential Tenancy Branch