



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, FT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on May 31, 2022, to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed with leave to reapply.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on April 1, 2018. Rent in the amount of \$2,392.00 was payable on the first of each month. A security deposit of \$1,150.00 was paid by the tenant

The parties agree that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2022..

The reason stated in the Notice was that the tenant has:

Reason for this One Month's Notice to End Tenancy: (check all boxes that apply)	
<input checked="" type="checkbox"/>	Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
<input checked="" type="checkbox"/>	Tenant is repeatedly late paying rent
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input checked="" type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input checked="" type="checkbox"/>	put the landlord's property at significant risk
<input type="checkbox"/>	Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
<input checked="" type="checkbox"/>	Tenant has not done required repairs of damage to the unit/site/property/park
<input checked="" type="checkbox"/>	Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
<input checked="" type="checkbox"/>	Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/ park.
<input type="checkbox"/>	Rental unit/site must be vacated to comply with a government order
<input type="checkbox"/>	Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.
<input checked="" type="checkbox"/>	Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The landlord testified when the tenant moved into the 3-bedroom rental unit the tenant was to be the only person living in the rental unit; however, tenant had one occupant move in the premises in 2021 and another occupant moved into the premises in February 2022. The landlord stated that they wanted to meet these occupants, be able to do credit checks and have them added to the tenancy agreement.

The landlord testified that since the tenancy commenced the tenant never paid rent on time and there have been a few cheques over the years returned for insufficient funds. The landlord stated that starting 2022 the tenant has paid by e-transfer, and they have not been late.

The landlord testified that the cheques the tenant wrote for rent were always from their painting business, never personal cheques. The landlord stated that it appears the tenant is running their painting company from the premises and is a great concern because it is a residential property, and this was noted during a city inspection on May 26, 2022.

The landlord testified that the tenant has affected other occupants of the building by constant noise and harassment. The landlord stated that on February 21, 2022, that the tenants had their employees at the property, and they were creating noise from moving wood and working. The landlord stated that another incident happened in February 2022, where they received a complaint from another occupant because they heard loud noises and complained they could smell marijuana. The landlord stated there was also another incident regarding laundry; however, that was resolved. The landlord stated there was also an issue with the tenant sending the previous occupants text messages; however, that was also resolved after they asked the tenant to stop.

The landlord submits that the tenant gave false and fabricated information about the property. That the tenant called city staff about the property in December 2021 for heat and water inspection without prior informing the landlord about the visit and the tenant allowed the city to tour the building without the landlord present. The tenant lied and misrepresented facts to the city staff, which resulted in undue stress to the landlord as well as the other tenants, as the city issued an order without consulting the landlord,

which resulted in \$13,000.00 spent on changing the entire pipes of the building, as well as drywall repair work.

The landlord confirmed that they have no evidence to give on the issues of illegal activity as this was just related to the smell of marihuana.

The landlord testified that on May 23, 2022, they notice damage to the front glass door and the glass was scattered on the ground. The landlord stated that also when the city attended the property the fire detectors where found to be tampered with. The landlord stated that the swing set in the backyard was also removed, which was on the property when they purchased the property in 2016.

The tenant testified that they have always had roommates over the years, and this was never an issue with the landlord. The tenant stated that their current roommate moved into the premises in 2021 and the landlord has met them several times, and the other roommate came in February 2022 only because they could not find housing, which they have now found. The tenant stated that this is a 3-bedroom home, and the tenancy agreement does not state they could not have roommates.

The tenant testified that over the years the landlord was given post dated cheques and the landlord would not cash them on the 1st of the month. The tenant confirmed they have not had any issues with rent since etransfer started.

The tenant testified that when they rented the premises the landlord knew they were running a painting business and some of the equipment would be stored in the garage. The tenant stated that their business is not done onsite as the work is done in their client's home.

The tenant testified that they deny they cause any unreasonable disturbances. The tenant stated the one complaint in February 2022, about noise and the smell of marihuana was simply untrue. The tenant stated this was a Saturday afternoon at 4 PM and one of his roommates had a friend over who had a loud laugh and absolutely no smoking of marihuana ever occurred. The tenant stated that these allegations were made by a previous occupant, which were unfounded and even the landlord told them that these occupants will be gone soon.

The tenant testified that they did not break the window on the door, it was broken by the landlord in 2021, when they were mowing the lawn and a rock hit and cracked the window. The tenant stated that they have never touched the fire detectors during their

tenancy, and it was not until the city inspected them that they even knew there was a problem. The tenant stated they acknowledged they removed a swing set from the backyard, but it had been there since the start of the tenancy and was rotten.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show the reasons within the Notice for the following reasons.

I find the tenant has not assigned or sublet the rental unit as the tenant is living in the rental unit. The tenant lives in a 3-bedroom residence and has had no more than two roommates. While I accept the tenant is the only tenant listed on the tenancy agreement. However, there is no restriction in the tenancy agreement regarding roommates and it is reasonable to conclude that a 3-bedroom residence would reasonably accommodate three people. Therefore, I find the landlord has failed to prove the tenant has allowed an unreasonable number of occupants in the rental unit.

I find the landlord has not proven the tenant is repeatedly late paying rent. Previously the landlord received post dated cheques from the tenant. Rent cannot be late, unless those cheques are nonnegotiable. The landlord did not provide sufficient evidence such as what months or years the tenant's cheques were nonnegotiable. However, they were referring to the time period of 2018 and 2021. The tenant has paid rent by e-transfer since January 2022 and on time and the Notice was issued on May 31, 2022. I find the landlord has failed to act in a timely manner, even if there were previous late payments in 2021. Therefore, I find the landlord has failed to prove the tenant has been repeatedly late paying rent.

I do not accept the landlord's evidence that they were unaware the tenant was operating a painting company and storing items on the property. This is not reasonable when the landlord received cheques in the name of the company. I find it highly unlikely that the landlord was not aware of this for the past four years and only came to their attention on May 26, 2022, this does not have the ring of truth. While I am not sure under what reasons within the Notice the landlord was claiming; however, I find this would not meet any of the grounds within the Notice.

I find the landlord has failed to prove the tenant has significantly interfered with or unreasonable disturbed another occupant, or the other related reasons. The landlord referred to two incidents in February 2022 and an incident about laundry. The landlord provided no witness statements or any other evidence for me to consider such as audio or video recordings. I find if the incidents were significant and unreasonable the landlord would not have waited for three months to issue the Notice and then after the complaining occupants vacated. Further, the landlord referred to the tenant harassing the previous occupants by communicating by text message; however, the text messaging ceased after the landlord ask the tenant not to text message with the other occupants. Therefore, I find the landlord has failed to prove the reasons stated within the Notice.

I find the tenant has not knowingly given false information to a prospective tenant or purchaser. The city is not a prospective tenant or a purchaser. The tenant had the right to file a complaint with the city if they believed the rental unit was not in compliance with the municipal bylaws, which it was not. Therefore, I find the landlord has failed to prove this reason within the Notice

I find the landlord has failed to prove the tenant has caused any damage to the rental premises due to their action or neglect or failure to make the repairs. The landlord admitted only after the tenant provided their testimony, that they had cracked the front door window in 2021, when it was hit by a rock . The landlord did not replace the broken glass. I find it is reasonable to conclude that an already cracked window in a door, that is frequently being used, would only lead to further breakage as the integrity of the glass was already compromised. Therefore, I find the landlord has failed to prove the tenant caused damage to the glass and it was not the tenant's responsibility to repair.

The landlord claimed the tenant tampered with the fire detectors; however, the landlord has failed to prove that this was by the action or neglect of the tenant. The landlord provided no proof that the fire detectors were inspected when the tenant moved into the premises and in good working order, such as a move-in condition inspection report. Further, I have no evidence over the four-year tenancy that the landlord has conducted any fire inspections, to ensure the fire detectors were maintained and in good working order. The landlord writes within the details of the Notice "no new battery was replaced"; however, it is the landlord's responsibility to maintain the fire detectors within the premises and conduct regular inspections to ensure they are working properly, this would include replacement of batteries. Therefore, I find the landlord has failed to prove the tenant had caused damage to the fire detectors and it was not the tenant's responsibility to repair.

I accept the tenant disposed of the swing set in the backyard, which they acknowledged they should have asked or informed the landlord. The tenants indicated that it was old and rusted and had no value. I find I cannot consider this to be damage to the rental unit. If the landlord can prove the age, value and condition of the swing set they can seek reasonable compensation for the loss.

Based on the above, I grant the tenant's application to cancel the Notice. The tenancy will continue until legally ended.

As the tenant was successful with their application, I authorize the tenant a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord to recover the cost of the filing fee.

Conclusion

The tenant's application to the Notice is granted. The tenancy will continue. The tenant is authorized to deduct \$100.00 from a future rent payable to the landlord to recover the cost of the filing fee.

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: October 28, 2022

Residential Tenancy Branch