



Dispute Resolution Services

Page: 1

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 named landlord was assisted by the building owner JB who primarily made submissions (the "landlord").

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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 background facts. This periodic tenancy originally began in September 2010. The landlord assumed this tenancy when they purchased the rental property in 2013. The current monthly rent is \$896.25 payable on the first of each month. The rental unit is a suite in a multi-unit building of 43 suites.

The named landlord is the building manager who testified that since taking responsibility for the rental building approximately 3 years ago, they have had numerous complaints about the level, frequency and nature of noise caused by the tenants and have issued multiple verbal warnings.

The landlords submit that they have received complaints from neighboring occupants about the behaviour of the tenants and their verbal interactions which has culminated in an incident on May 16, 2022 when the landlord says the tenants made verbal threats against other occupants and the landlord. The landlord contacted the police who attended on that day.

The landlord subsequently issued a 1 Month Notice dated May 18, 2022 indicating the reasons for the tenancy to end as:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

The tenant confirmed receipt of the notice on May 18, 2022 and filed their application to dispute on May 27, 2022.

The landlord testified that since the issuance of the 1 Month Notice the behaviour of the tenants have continued with additional complaints from neighboring occupants and another incident in September 2022 when police were called.

The landlord submitted into evidence copies of hand-written letters from neighboring occupants complaining about “fighting and LOUD VULGAR Language” from the rental suite and incidents of harassment of occupants and family members.

The tenants dispute that they have had interactions with the other occupants or the landlord as described and deny that there is a basis for the tenancy to end. The tenants provided hand-written submissions stating they have not interacted with the occupants or landlord as described and while they may argue and fight in their suite, it is infrequent and for short periods of time.

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. In the present case I accept that the 1 Month Notice was served on May 18, 2022 and the tenants filed their application on May 27, 2022. I therefore find the tenants were within the statutory timeline to file their application.

When a 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 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 there has been significant interference with or unreasonable disturbance of other occupants or the landlord or a serious jeopardy to the health, safety or lawful rights of occupants or the landlord by the tenants.

Based on the totality of the evidence I am not satisfied that the landlord has met their evidentiary onus on a balance of probabilities. I find the few complaints about the level, nature and frequency of noise by the tenants to be insufficient to determine that there has been a disturbance or interference that would be considered unreasonable or significant. In my view, a few instances of raised voices in their suite is insufficient to constitute a basis for a tenancy to end. I find the landlord’s documentary evidence

consists of a single complaint letter dated prior to the issuance of the 1 Month Notice and one letter detailing incidents of noise in June and July afterwards. While the landlord testified that they have kept incident logs since they began managing the property in 2019, none was submitted into evidence and their testimony about past incidents was vague with no dates cited.

If the behaviour of the tenants was an ongoing issue as claimed then it would be reasonable to expect there would be documentary evidence of complaints, incident logs and records of warning letters. The landlord's documentary evidence consists of a few recent hand-written letters of complaint and their vague testimony. I find there is insufficient evidence to determine that there has been unreasonable disturbance or significant interference by the tenants.

I place little probative value on the attendance of police or police incident reports as it is open for any member of the public to call and make complaints regardless of the underlying cause.

I find insufficient evidence in support of the tenants uttering threats against the other occupants or landlord. I find little evidence that the incidents occurred in the manner described by the landlord and even if they did, I find the nature of the interactions described to be more in the nature of posturing verbiage rather than real threats of physical harm.

Taken in its entirety I find insufficient evidence to find that there has been a jeopardy to the health, safety or lawful rights of others attributable to the tenants.

Based on the foregoing I find the landlord has not met their evidentiary burden to establish a basis for this tenancy to end. Accordingly, I grant the tenants' application and the 1 Month Notice of May 18, 2022 is cancelled and of no further force or effect.

Conclusion

The 1 Month Notice of May 18, 2022 is cancelled. 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: October 6, 2022

Residential Tenancy Branch