



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, CNC, RP, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause. The landlord applied for an Order of Possession. The tenant also applied for an order directing the landlord to carry out repairs. Both parties applied for the recovery of the filing fee.

The tenant and the landlord attended the hearing. The landlord was represented by an Advocate and another person introduced as the co-owner of the rental unit. The co-owner, the landlord, his advocate and the tenant each gave affirmed testimony, and the parties were given the opportunity to make submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision. I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for an order directing the landlord to carry out repairs. As this section of the tenant's application is unrelated to the main section, which is to cancel the one month notice, I dismiss this section of the tenant's claim, with leave to reapply.

Accordingly, this hearing only dealt with the tenant's application to set aside the notice to end tenancy.

Issues to be decided

Does the landlord have cause to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue? Does the tenant have reason to apply for an order directing the landlord to carry out repairs?

Background and Evidence

The co-owner (CS) is the landlord's daughter and testified that this month-to-month tenancy began on October 1, 2020, and the tenant still resides in the rental unit. Rent in the amount of \$1,500.00 was payable on the 1st day of each month, which was increased by \$22.50 effective October 1, 2022, and there are no rental arrears. The tenant is responsible for 40% of the utilities.

The landlord owns half of a side-by-side duplex, and the rental unit is a basement suite in that portion of the building. The upper unit is also rented.

On May 31, 2023, the landlord served the tenant with a One Month Notice to End Tenancy for Cause, with an effective date of vacancy of June 30, 2023. The reasons for issuing the notice are:

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 landlord stated that the main reason for the Notice to End Tenancy was that the tenant and the occupants of the rental unit above were in constant conflict which resulted in both tenants making complaints to the landlord about the other. Other reasons included the tenant making racist comments and posting slanderous allegations against the landlord online.

The tenant stated that the upstairs occupants were supposed to be four in number but are actually up to nine persons living in the three-bedroom suite. In addition, they have a catering business and there is added traffic from clients picking up their food. The tenant found it unfair that she being a single occupant of the suite below should have to cover 40% of the utility bills, for a rental unit that housed up to 9 people and cooked food for catering purposes. The tenant stated that the catering service was advertised on social media.

The tenant also alleged that the upstairs tenants used a treadmill at all hours of the night which disturbed her sleep making it difficult for her to work at her full-time job. The landlord stated that they confronted the upstairs tenants regarding the use of a treadmill at night and they denied the allegations. The landlord accepted that they run a catering service out of the unit.

The landlord stated that the tenant inundated her with multiple text messages/emails and posted malicious comments against them online.

The tenant admitted she posted slanderous allegations against the landlords online but stated that she removed the posts soon after. The landlord stated that the posts were online for at least 30 days. The parties accused each other of passing racial slurs against each other and calling each other derogatory names.

The landlord filed videos into evidence. The videos, show the tenant going in and out of her suite, slamming the door, talking to the recording camera and interacting with police. The tenant filed audio clips into evidence, but they were unclear and barely audible.

Analysis

I have reviewed the submissions of both parties and I have formed the opinion that the past six to nine months have been very stressful on both parties for different reasons. It is my determination that the parties currently find themselves in a situation which has progressively evolved and for which each has made some contribution to its unfolding. I also find that the conduct of the occupants of the upper suite may have contributed to the deterioration of the landlord/tenant relationship.

Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the landlord did not provide compelling evidence to support her claim that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord or had seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Accordingly, the notice to end tenancy is set aside and the tenancy will continue. Since the tenant is successful in her application, she is entitled to the recovery of the filing fee. The landlord must bear the cost of filing their own application.

The tenant may make a one-time deduction of \$100.00 from a future rent.

Conclusion

The notice to end tenancy is set aside. The tenancy will continue.

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: September 22, 2023

Residential Tenancy Branch