



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC CNC MNDC

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenant seeks:

- a Monetary Order for money owed or compensation for damage or loss under the *Act* pursuant to section 67;
- cancellation of the landlord’s Notice to End Tenancy issued for Cause pursuant to section 47 of the *Act*.

The landlord seeks:

- an Order of Possession for Cause pursuant to section 55 of the *Act*,

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented at the hearing by property manager, A.G. (the “landlord”), while the tenant was represented at the hearing by her lawyer, C.H. (the “tenant”).

Both parties acknowledged receipt each other’s applications for dispute and evidentiary packages. Pursuant to sections 88 & 89 of the *Act*, I find that both parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord’s Notice to End Tenancy? If not, should the landlord be granted an order of possession?

Can the tenant recover a monetary award related to loss of quiet enjoyment in the rental unit?

Background and Evidence

It was explained to the hearing by both the landlord and the tenant that this tenancy began on September 1, 2011. Rent is currently \$850.00 due on the 1st of each month.

The landlord said that he was seeking an Order of Possession based on a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") served to the tenant on August 23, 2017. A copy of this 1 Month Notice submitted to the hearing demonstrated that the landlord cited the following reasons for its issuance:

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*

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.*

The landlord testified at the hearing that the main reason for the issuance of the 1 month notice was due to an incident that occurred on April 2, 2017 between the tenant and the building's owner. The landlord stated that he could not provide specific testimony about the incident because he was hired on by the building's owner to act as the property manager in June 2017. The landlord explained it was his understanding that the tenant had attacked the building's owner following a disagreement between the parties. As part of his evidentiary package, the landlord cited a letter from a witness named as T.N. which described an incident that occurred on May 1, 2017.

In addition to this altercation between the building's owner and the tenant, the landlord said that he was seeking an Order of Possession due to ongoing conflict between the upstairs tenant and the tenant, and because of on-going complaints from this upstairs tenant regarding the smell of marijuana emanating from the tenant's rental unit. The landlord specifically cited disturbances caused by the tenant related to blocking the upstairs tenant's access to the shared yard, along with an incident of yelling that occurred between the tenant's son and the child of the upstairs tenant. As part of his evidentiary package, the landlord supplied a letter from the upstairs tenant which

detailed numerous incidents for which describe the disturbances he has allegedly experienced at the hands of the tenant.

Counsel for the tenant argued that the landlord's Notice to End Tenancy should be cancelled because the landlord was hired after the incident of April 2, 2017 and that he could therefore not speak to the merits of the landlord's notice to end tenancy without having any firsthand knowledge. Furthermore, the tenant's lawyer questioned the admissibility of the landlord's statements regarding the conflicts that occurred between the tenant and the upstairs neighbour, and questioned the content of the upstairs tenant's written submissions.

In addition to a cancellation of the 1 Month Notice, the tenant sought a monetary award equivalent to 3 month's rent, or 25% of a year's rent. Counsel for the tenant explained that the tenant had suffered a breach of quiet enjoyment due to the ongoing conflicts with the upstairs neighbour. He argued that the upstairs neighbour had repeatedly harassed the tenant and that the building's owner had taken no actions to address these matters. At the hearing the tenant said she had recently informed the landlord's secretary about her concerns. The landlord said he had not been made aware of any complaints that the tenant had regarding the upstairs neighbour.

As part of the tenant's evidentiary package, numerous letters detailing the specific issues that had occurred between herself and the upstairs neighbour were supplied. These documents specifically described the dates that incidents occurred and the nature of the disputes. Furthermore, they provided a record indicating that the building's owner was made aware of the tenant's complaints.

Analysis

This application by both parties primarily concerns a 1 Month Notice to End Tenancy for Cause. The landlord has applied for an Order of Possession, while the tenant has applied to cancel this 1 Month Notice.

After having reviewed the evidence submitted to the hearing, and considering the oral testimony of all parties in attendance at the hearing, I do not find that the landlord has provided sufficient evidence that 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 or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*

The landlord was unable to accurately describe the events of April 2, 2017 as he was not yet employed by the building's owner when this incident took place. Furthermore,

the documents on which he was relying as evidence do not contain sufficient detail speaking to the incident. A letter from T.N. describes an event of May 1, 2017, while an access to information request describes an altercation on April 2 (year not provided). In addition, the written statement from the upstairs tenant contains many allegations, none of which are supported by any detail. This letter failed to state the dates that conflicts are purported to have occurred and does not adequately describe how these interactions have *significantly interfered with or unreasonably disturbed* them. I find it very difficult to understand why no evidence was presented to the hearing by the person who is purported to have suffered a breach of their health or safety and question why a notice to end tenancy was issued over 4 months after an incident between the tenant and the building's owner is alleged to have occurred. For these reasons the landlord's application for an Order of Possession is dismissed. This tenancy shall continue until it is ended in accordance with the *Act*.

The second aspect of this application concerns a monetary application equivalent to 3 month's rent or 25% of a year's rent for the loss of quiet enjoyment that the tenant said she had experienced.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove her entitlement to her claim for a monetary award.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Based on the oral testimony and written submissions presented at the hearing, I find sufficient evident exits demonstrating that the tenant has suffered from *frequent and*

ongoing interference. It is evident that the tenant and her upstairs neighbour have a difficult relationship with one another which has resulted in several disagreements. The landlord has a responsibility to ensure that breaches of quiet enjoyment are addressed in a timely fashion. As part of her evidentiary package, the tenant supplied numerous detailed, dated and signed accounts of her experiences with the upstairs tenants. One letter dated January 2016 and addressed to the building's owner detailed the tenant's ongoing concerns with the upstairs tenant and the specific incidents which took place.

I find that the tenant has suffered a loss under section 67 of the *Act* and that she is entitled to a monetary award. Under section 67 of the *Act* an applicant must provide evidence that can verify the actual monetary amount of the loss or damage. I find that the tenant has failed to justify a monetary award equivalent to 3 month's rent or 25% of a year's rent. I find that an award equivalent to one month's rent would be more appropriate for the loss of quiet enjoyment due to repeated interference from the upstairs tenant.

Conclusion

The tenant was successful in cancelling the landlord's 1 Month Notice to End Tenancy. This tenancy shall continue until it is ended in accordance with the *Act*. I issue a Monetary Order of \$800.00 in favour of the tenant as follows:

Item	Amount
Loss of Quiet Enjoyment	\$800.00
Total =	\$800.00

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 20, 2017

Residential Tenancy Branch