



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OPC FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for an Order of Possession for Cause pursuant to section 55 and authorization to recover the filing fee for this application from the tenants pursuant to section 72. The tenants applied for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant in attendance at this hearing ("the tenant") acknowledged receipt of the landlord's 1 Month Notice to End Tenancy as well as the landlord's Application for Dispute Resolution Package with evidence. The landlord acknowledged receipt of the tenants' Application for Dispute Resolution.

Issue(s) to be Decided

Should the landlord's notice to end tenancy be cancelled or is the landlord entitled to an Order of Possession? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on June 1, 2017. The monthly rent of \$1000.00 is payable on the first of each month. There is no written tenancy agreement between the two tenants and the landlord. The landlord confirmed that he continues to hold a \$500.00 security deposit paid by the tenants at the outset of the tenancy. The landlord sought to end the tenancy because of the numerous complaints and other issues that have arisen with these tenants.

The landlord issued a 1 Month Notice to End Tenancy for Cause on October 27, 2017 by posting it on the tenants' door. In the 1 Month Notice, the landlord cited several grounds for cause;

The 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;*
- *put the landlord's property at significant risk.*

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 or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord submitted copies of 3 handwritten letters of complaint from the tenants' downstairs neighbours as well as 3 letters to the tenants from the landlord advising the tenants of breaches of the tenancy agreement. The landlord claims that the tenants are engaged in illegal activity as well as generally engaged in activity that does not comply with the tenancy agreement include the probationary agreement and crime free addendum signed by the tenants and submitted as evidence for this hearing.

The landlord testified that there is a constant stream of people coming from the tenants' rental unit and that they come at all hours of the night. He testified that this is the basis for the complaints against the tenants. As well, he testified that this is the basis for addition of security cameras and additional security precautions taken at the rental unit.

The landlord also testified that, on entering the tenants' rental unit to change the smoke detector, he noticed what he described as a large hole in the wall. The landlord was unable to describe or provide reference for the size of the hole.

The tenant testified that he was surprised at the seriousness of the landlord's submissions at this hearing to end his tenancy. The tenant testified that, since a complaint in August 2017, he has not had any further complaints brought to his attention. He testified that the only incident since the August complaint was when the landlord inspected his rental unit, found the smoke detector detached and a hole in the wall from where he moved his sofa, damaging the wall.

Analysis

When a tenant applies to cancel a notice to end tenancy or when a landlord applies for an Order of Possession, the burden of proof falls to the landlord to provide reasons and evidence to prove that the notice to end tenancy is both valid and justified. In this case, the landlord relies on his testimony regarding individuals coming and going from the tenants' rental unit. He also relies on the documentary evidence to show that the tenant has had 3 complaints against him over the course of approximately 7 months of tenancy and 3 letters issued related to those complaints as well as other issues identified by the landlord. Most of the documents described above are within the first 4 months of the tenancy.

The landlord's 1 Month Notice includes a claim that the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord. It is essential that the landlord provide evidence that, on a balance of probabilities the tenants have created an irregular, ongoing and beyond the normal disturbance of a multi-residence building. I find that the 3 complaint letters, dated prior to September 2017 do not provide sufficient evidence to support the claim that the tenant has **significantly** interfered with another occupant or the landlord.

I find that the 3 letters and testimony of the landlord also do not provide sufficient evidence to prove that the tenants or someone permitted on the property by the tenants has **seriously** jeopardized the health or safety or lawful right of another occupant or the landlord. The landlord has similarly provided insufficient evidence to support the claim that the tenants or someone permitted on the property by the tenants has put the landlord's property at **significant** risk. A hole in the wall, to be addressed at the end of tenancy does not suffice to show significant risk nor do late night visitors.

With respect to the remaining grounds to end the tenancy relied upon by the landlord, it is the landlord's burden to prove that the activity or activities of the tenants were illegal. The landlord should be prepared to establish the illegality by providing to the arbitrator and to the other party a copy of the relevant rule or legislation in accordance with the Rules of Procedure and evidence of the tenants' actions in contravening that rule.

The landlord relied on the ground for cause that the tenants have engaged in **illegal activity** that has damaged the landlord's property; affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; or that the tenants jeopardized a lawful right or interest of another occupant or the landlord. The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

I find that the landlord presented insufficient evidence to show that the tenant or someone allowed on the property by the tenants engaged in illegal activity. The landlord did not supply evidence from a security camera, nor a log or other documentation showing that the tenants engaged in any form of illegal activity. And, as stated above, the landlord did not provide sufficient evidence to show that the other occupants are affected in a significant way as a result of the tenants' illegal actions; the landlord did not provide sufficient evidence of the extent of any

damage to the landlord's property; and the landlord did not provide sufficient evidence that jeopardy that would attach to the activity as it affects the landlord or other occupants.

I find that the landlord submitted insufficient evidence to support the 1 Month Notice to End Tenancy regarding the tenants' behaviour in the residence. Furthermore, I find that the landlord provided insufficient evidence of illegal activity. Based on the lack of reliable evidence submitted by the landlord, I grant the tenants' application to cancel the notice to end tenancy.

As the landlord was unsuccessful in his application, I find that he is not entitled to recover his filing fee.

Conclusion

I grant the tenants' application to cancel the notice to end tenancy. The tenancy shall continue.

I dismiss without leave to reapply the landlord's application for an Order of Possession and the recovery of his 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: January 31, 2018

Residential Tenancy Branch