



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AAT, RR, OLC, FFT

Introduction

This hearing originally convened on October 2, 2018. After one hour and 42 minutes this hearing was adjourned due to time constraints and an Interim Decision dated October 3, 2018 was provided to both parties.

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 and authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant G.B. (the "tenant") testified that the landlord was served the notice of dispute resolution package in person on August 13, 2018. The landlord confirmed receipt of the dispute resolution package on August 13, 2018. I find that the landlord was served with this package on August 13, 2018, in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2016 and is currently ongoing. A security deposit of \$900.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The property in question is a house, the landlord lives in the upper suite and the tenants live in the lower suite. The backyard has a pool to which both the landlord and tenants have access.

The landlord's advocate testified that the landlord served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of September 30, 2018 (the "One Month Notice") by placing a copy in the tenants' mailbox. The landlord testified that she did not know on what date she put the One Month Notice in the tenants' mailbox. Tenant G.B. (the "tenant") confirmed receipt of the One Month Notice on August 28, 2018.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- 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.
- 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;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - Jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord's advocate testified that the tenants have allowed an unreasonable number of visitors to come to the backyard pool. The landlord's advocate testified that on one occasion, there were 12 people in the backyard using the pool. The landlord entered into evidence a signed letter from a neighbor which states that she has noticed an increase in the number of visitors attending at the subject property on the tenants side.

The tenant testified that they have not allowed an unreasonable number of people to use the pool and that there was only one occasion where 12 people were in an around the pool which was for their grand-daughter's birthday party.

The landlord's advocate testified to the following facts. The backyard is surrounded by a fence and that there is a gate in the fence which allows entry and exit from the backyard. The landlord has asked the tenants repeatedly not to use the gate to gain access to the backyard because she is concerned someone might gain access to the backyard and fall in the pool and that she might be liable for any injury they suffer. The tenants did not listen to the landlord and continued to enter the backyard through the gate and continued to allowed visitors to enter through the gate so in August of 2018 the landlord put a pad lock on the gate. The landlord made the key to the pad lock available to the tenant but he refused to come and pick it up from her.

The tenant testified that a number of his friends are handicapped and can only gain access to his rental property through the gate. The tenant testified that the landlord uses the gate to gain access to the backyard and he should be permitted to as well. The tenant testified that he should not have to sign for keys to the pad lock, the landlord should provide the keys to him.

The landlord's advocate testified to the following facts. The landlord is afraid of tenant L.B. who has acted in a threatening manner on several occasions. On May 1, 2017 the landlord provided the tenants with a new tenancy agreement to sign as their first one-year fixed term tenancy had expired. After reviewing the new tenancy agreement, tenant L.B. banged on the landlord's door yelling and screaming about the new terms. The landlord did not open the door.

Tenant L.B. testified to the following facts. Tenant L.B. knocked on the landlord's door because the landlord turned the furnace off, not because of the new tenancy agreement. Tenant L.B. knocked on the door to ask the landlord to turn the furnace back on but the landlord would not open the door. Tenant L.B. waived her hands in the air in frustration as she left the landlord's front door.

The landlord's advocate testified that on March 30, 2018 tenant L.B. yelled at the landlord's daughter about the cost of hydro. Tenant L.B. denied yelling at the landlord's daughter about hydro.

The landlord's advocate testified that on June 22, 2018 the landlord saw people coming through the gate into the backyard and she told them not to use the gate. The landlord's

advocate testified that tenant L.B. came over to the landlord and started screaming and swearing at the landlord for interfering with her guests. The landlord called the police.

Tenant L.B. testified to the following facts. On June 22, 2018 she was outside in the backyard with her family and the landlord came over and acted in a rude manner to her family. Tenant L.B. got very upset about the landlord's conduct and swore and yelled at the landlord. The police did not lay charges.

The landlord's advocate testified that on August 1, 2018 the tenant was aggressive towards her when he paid his rent. The tenant testified that he has never acted in a threatening manner towards the landlord and that he would never threaten a woman.

The landlord's advocate testified to the following facts. Tenant L.B. zap strapped a fake Christmas tree to a deck railing, restricting access to the outside tap the landlord uses to water the backyard. The landlord alleges that Tenant L.B. did this on purpose so as to injure the landlord when she tried to use the tap. The landlord scratched her arms when she was trying to gain access to the tap.

Tenant L.B. testified that she zap strapped the Christmas tree to the railing because she thought it looked nice and that she had no intention of injuring the landlord.

The landlord's advocate testified to the following facts. On August 2, 2018 there was a gas leak in a house across the street from the subject property. The landlord had small children in the house and it was not safe to exit out the front door and so the landlord tried to evacuate through a door which led into the tenants' suite. The tenants refused to open the door.

The landlord's advocate testified that on August 5, 2018 the landlord opened a file with the police because she is afraid tenant L.B. will hit her because she waves her arms around when she gets angry.

The tenant testified that he was within his rights to restrict access from the landlord's suite into his suite. The tenant testified that it is not appropriate for the landlord to have an emergency exit which allows the landlord to gain access to his suite whenever she wants to.

The landlord's agent testified that the tenant sabotaged the landlord's pool by putting rocks in the pool pump. The pump cost \$1,147.97 to fix, an invoice stating same was entered into evidence. The landlord entered into evidence a letter from the pool repair

company which states that the impeller of the pump was full of stones and that they cannot determine how the stones got into the impeller. The tenants denied tampering with the pump.

Both parties agree that the tenant has marijuana plants in the backyard.

The landlord's advocate testified that the tenant took a video of the landlord's daughter without her permission. The tenant testified that he took an audio recording of the noise level outside as evidence in his claim for loss of quiet enjoyment.

During the hearing I asked the landlord and the landlord's advocate to provide me with any statute, piece of legislation or law that they alleged the tenant breached. The landlord and the landlord's advocate did not provide me with any statute, piece of legislation or law that they alleged the tenant breached.

Analysis

I find that the One Month Notice was served on the tenant on August 28, 2018, in accordance with section 88 of the *Act*.

Section 47(1)(c) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has not proved that the tenants have allowed an unreasonable number of occupants in the rental unit. I find that in this case, having 12 people in or around the pool on one occasion is not grounds for eviction, nor is having frequent visitors. I find that none of the landlord and the landlord's agents submissions and evidence establishes a ground for evection under section 47(1)(c), even if I were to accept the landlord's version of over that of the tenants.

Section 47(1)(d) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has:

- (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii)put the landlord's property at significant risk.

Section 47(1)(f) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

I find that while the verbal altercations between the tenants and the landlord have disturbed the landlord, they have not been serious enough to constitute an unreasonable disturbance or significant interference. I note that while the actions of tenant L.B., such as screaming and swearing at the landlord, have not yet met the threshold resulting in the eviction of the tenants, further outbursts and inappropriate behaviour in the future may constitute grounds for eviction.

I find that the landlord has not established on a balance of probabilities that the tenant put up the Christmas tree in an attempt to injure the landlord. I find that the landlord has not established on a balance of probabilities that the tenants have seriously jeopardized the health or safety or a lawful right or interest of the landlord. I find that the tenant was entitled to deny the landlord entry into his unit as the tenant is entitled to privacy in the subject rental property.

I find that none of the landlord and the landlord's agent's testimony and evidence establishes a ground for evection under sections 47(1)(d)(i) and 47(1)(d)(ii) of the *Act*, even if I were to accept the landlord's version of over that of the tenants.

The letter from the pool company stated that they did not know how the rocks got in the pump. I find that the landlord has not proven on a balance of probabilities that the tenants damaged the pool pump. I find that none of the landlord's and the landlord's agent's testimony and evidence establishes a ground for evection under section 47(1)(f) or section 47(1)(d)(iii) of the *Act*.

Section 47(1)(e) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The term "illegal activity" includes 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.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

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.

The landlord did not provide me with a copy of a statute or bylaw the landlord alleges the tenants breached. I find that none of the landlord's and the landlord's agent's testimony and evidence establishes a ground for ejection under section 47(1)(e) of the *Act*.

I find that the landlord has failed to prove, on a balance of probabilities, any of the reasons stated on the One Month Notice for ending this tenancy. I therefore find that the One Month Notice is of no force or effect.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord. Pursuant to section 72 of the *Act*, I find that the tenants are entitled to deduct \$100.00 on one occasion, from rent due to the landlord.

Conclusion

The One Month Notice is of no force or effect. This tenancy will continue until it is 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: November 20, 2018

Residential Tenancy Branch