



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC
 OPC, FFL

Introduction

This teleconference hearing was scheduled in response to an application by both parties under the *Residential Tenancy Act* (the “Act”). The Tenants applied to cancel a One Month Notice to End Tenancy for Unpaid Rent (the “One Month Notice”), and for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation*, or tenancy agreement. The Landlord applied for an Order of Possession based on a One Month Notice, and for the recovery of the filing fee paid for this application.

The Landlord was present for the teleconference hearing, as was one of the Tenants and a legal advocate for the Tenant (the “Tenant”). The parties confirmed that the Notice of Dispute Resolution Proceeding package, and copies of each party’s evidence was served to the other party as required. Neither party brought up any concerns regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Should the Landlord be issued an Order of Possession based on the One Month Notice to End Tenancy for Cause?

Should the Landlord be ordered to comply with the *Act, Regulation* or tenancy agreement?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy, which were also confirmed by the tenancy agreement that was submitted into evidence. The tenancy began on May 1, 2018. Monthly rent is \$2,300.00. A security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were paid at the outset of the tenancy.

On September 27, 2018, the Landlord served the Tenants with a One Month Notice by posting it on the Tenants' door. The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

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

Further details on the One Month Notice were provided as follows:

'On Sep 25 from 19:30 to 21:30 (the Tenants) were making a big noise by banging doors, stomping, dragging and hitting something in the house, which disturbed my sleeping before night shift. They likely to cause damage to the

property and have adversely affected the quiet enjoyment, security, safety or physical well-being' (Reproduced as written)

The Landlord provided testimony that on September 25, 2018, there were loud noises coming from the Tenants' unit that lasted for approximately two hours. The Landlord submitted recordings of the noises that she stated she could hear from her bedroom. The Landlord resides on the lower level of the home, while the Tenants' rental unit is upstairs.

The Landlord stated her belief that the Tenants caused the noise disturbance due to being upset over her notice to enter the property for an inspection. She provided three notices to enter; August 28, 2018 for an inspection of the property, September 10, 2018 to repair the laundry room door, and September 25, 2018 for an inspection of the property. The notices to enter were submitted as documentary evidence.

The Landlord provided further testimony that one of the Tenants called her twice on September 25, 2018 at 7:37 pm and interrupted her sleep. The call log was submitted into evidence. The Landlord also submitted an email from one of the Tenants into evidence, dated September 25, 2018, in which the Tenant stated that the Landlord was harassing them.

The Tenant provided testimony that the noise was not a significant interference to the Landlord. The Tenant submitted that the Landlord had asked them to clean the garage, which they were doing on the evening in question.

The Landlord submitted that she had not asked the Tenants to clean the garage.

The Landlord stated that she provided a warning letter to the Tenants on September 6, 2018, which was included in her evidence submissions. The letter states that the Tenants breached the tenancy agreement and addendum by renting out a bedroom to a friend between July and August 23, 2018.

The letter also states that at the inspection that took place on September 1, 2018, the Tenants denied her access to one of the bedrooms in the rental unit, despite proper notice being provided.

Lastly, the letter states that one of the Tenants has demonstrated inappropriate behaviour towards her through yelling and aggressive language.

The Tenant submitted that they have never had a guest stay longer than 5 days. They also noted an amendment to the tenancy agreement, dated July 22, 2018. The amendment was submitted into evidence and states that the Tenants may sublet one room to a new tenant until October 31, 2018, at which time the new tenant must vacate.

The Tenant also stated that the noise from cleaning the garage was not excessive, and that neither he nor the co-tenant have engaged in any illegal activity as stated on the One Month Notice.

The Tenant noted his concern with the Landlord providing frequent notices to inspect the property and inquiring as to guests who come and go from the rental unit. He stated that they had not received one of the letters regarding an inspection of their unit on September 1, 2018.

However, when the Landlord attended the rental unit, they let her in to inspect the unit. The Tenant stated that the Landlord wanted access to one of the bedrooms, which they did not let her due to insufficient notice to enter and for privacy reasons. He stated that the Landlord was opening drawers with their personal belongings during the inspection.

The Landlord testified that she opened furniture drawers to make sure they were working properly. She stated that her intent was not to invade privacy. She confirmed that the rental unit was not furnished, and the Tenants had provided their own furnishings in the rental unit.

The Landlord stated that she has never restricted guests of the Tenants and that she was sure that they had rented out a bedroom to a friend due to speaking to the friend at the home. She also stated her concern that the Tenants are not separating garbage and recycling and submitted a photo into evidence.

The Tenant stated that it is not their garbage in the photo and that they are separating the garbage and recycling as required.

The Landlord submitted a number of audio recordings into evidence, including the noise from September 25, 2018, as well as audio clips of one of the Tenants from the inspections of the rental unit.

Along with applying to cancel the One Month Notice, the Tenants have requested an Order for the Landlord to comply with the *Act*, *Regulation* or tenancy agreement. The Tenant stated that he wants the Landlord to follow the *Act* in regard to conducting inspections as he believes she is conducting unnecessary inspections of the rental unit and invading their privacy during the inspections.

The Tenant would also like the Landlord to respect their privacy regarding their guests that attend the rental unit, and for the Landlord to stop threatening to end the tenancy.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

I refer to Section 47(4) of the *Act* which states that a tenant has 10 days in which to dispute a One Month Notice.

As the Tenant was unsure of the exact date the One Month Notice was received, and due to a lack of evidence to prove when it was received, I refer to the deeming provisions of Section 90 of the *Act* which state that a document is considered received on the 3rd day after it is posted on the door.

As the One Month Notice was posted on the Tenants' door on September 27, 2018, I determine that it is deemed received on September 30, 2018. The Tenants applied to dispute the notice on October 9, 2018, within the 10 days provided for under the *Act*.

When a tenant applies to dispute a notice to end tenancy, the onus is on the Landlord to prove that the reasons for the notice are valid. The Landlord noted two grounds for ending the tenancy on the One Month Notice.

The first ground was that the Tenants or a guest has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, pursuant to Section 47(1)(d)(ii) of the *Act*.

While the Landlord provided testimony and evidence regarding the two hours of noise that occurred on September 25, 2018, the recordings of the noise are not clear enough to establish the extent or level of the noise.

However, based on the testimony of both parties, I find it likely that some noise occurred in the home between 7:30 and 9:30 pm on September 25, 2018. Regardless of whether the Landlord had asked the Tenants to clean the garage, I do not find sufficient evidence to establish that this incident caused excessive noise, and do not find that it occurred at an unreasonable time of day, or for an extensive length of time.

The Landlord stated on the One Month Notice that the noise was caused by actions that were likely to lead to damage to the property. However, I find that based on the evidence and testimony of both parties, I cannot determine that any damage was caused or that the property is at risk of future damage due to the actions of the Tenants.

Due to insufficient evidence, I do not find that the Landlord proved that this incident of noise was significant enough to end the tenancy.

The second ground on the One Month Notice was that the Tenants or a guest has engaged in illegal activities that has adversely affected the quiet enjoyment, security, safety or physical wellbeing of another occupant, pursuant to Section 47(1)(e)(ii) of the *Act*.

I do not find any evidence before me to establish that the Tenants engaged in illegal activity. I do not find evidence to demonstrate that the noise was caused by illegal activity and neither party brought up any other illegal actions for consideration. As such, I find that the Landlord did not prove this ground for ending the tenancy on the One Month Notice.

Although the Landlord also provided testimony and evidence regarding her concern with the Tenants renting out a room in their home, I do not find that this was a reason stated on the One Month Notice, and therefore do not find that it is relevant in determining whether the One Month Notice is valid.

When two parties to a dispute provide conflicting testimony regarding the events that occurred, it is up to the party with the burden of proof to provide evidence over and above their testimony to establish their claim.

Based on the above analysis, I find that the Landlord did not meet the burden of proof regarding the reasons for the One Month Notice. Therefore, the One Month Notice, dated September 27, 2018 is hereby cancelled and of no force or effect. The tenancy continues until ended in accordance with the *Act*.

The Landlord's Application for an Order of Possession is therefore dismissed, without leave to reapply, as the One Month Notice has been cancelled.

As the Landlord was not successful in her Application, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

As for the Tenant's Application for an Order for the Landlord to comply with the *Act*, I refer to Section 29 of the *Act* which states the following:

- 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

In accordance with this Section of the *Act*, the Landlord must provide sufficient notice to enter the rental unit, which includes the date and time, along with a specific purpose for entering.

I do not find it reasonable for the Landlord to open the furniture drawers of the Tenants, and it is not her responsibility to ensure that their furniture is working correctly. I find this

to be an invasion of privacy and note that Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment, including the right to reasonably privacy.

An inspection of the rental unit must be related to the property of the rental unit, in relation to the requirements of the *Act* and/or tenancy agreement. The personal belongings of the Tenants are not subject to inspection by the Landlord.

As for what occurred at one of the visits where the Tenants stated that they did not receive the Landlord's notice to enter the property, I find that I do not have sufficient regarding when the notice was sent to the Tenants or when it was received.

However, I remind the Landlord that at least 24 hours notice must be provided after the Tenants receive the written notice. The Landlord is reminded of the deeming provisions of Section 90 of the *Act* that state when a document is considered received, depending on the method of service. For example, a letter left in the Tenants' mailbox is deemed received 3 days later.

Due to the conflicting testimony of the parties, I find that I cannot determine whether the Landlord is questioning the guests that are visiting the rental unit. Therefore, I will not make any findings on this, other than to remind the Landlord that she does not have a right to interfere with any guests of the Tenants on the property of the rental unit, in accordance with Section 30 of the *Act*.

Based on the above analysis, I order the Landlord to follow Sections 28, 29 and 30 of the *Act*. Specifically, the Landlord must provide at least 24 hours written notice prior to entering the rental unit, and be aware of the deeming provisions of Section 90 of the *Act*. The purpose for entering the unit must be reasonable and the written notice to enter must include the purpose for the entry.

The Landlord must also respect the privacy of the Tenants and any guests of the Tenants, pursuant to Sections 28 and 30 of the *Act*. Should the Landlord breach these sections of the *Act*, the Tenants may have cause to seek monetary compensation through the Dispute Resolution process.

Conclusion

The Landlord's Application is dismissed, without leave to reapply.

The Tenants' Application to cancel the One Month Notice is successful. The One Month Notice, dated September 27, 2018 is cancelled and of no force of effect. This tenancy continues until ended in accordance with the *Act*.

The Landlord is ordered to comply with the *Act* as outlined in the Analysis section of this decision.

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 07, 2018

Residential Tenancy Branch