



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlords with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 6, 2019. Both parties also confirmed the landlords served the tenants with the submitted documentary evidence in person on March 5, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Discussions with all of the parties during the hearing confirmed that the tenants' were seeking a monetary claim of \$2,052.39 which was clarified as compensation for emotional stress and time equal to 1 months' rent (\$1,900.00), \$52.39 purchase of software to prepare evidence and recovery of the \$100.00 filing fee. Section 72 of the Act was explained to both parties in which recovery of litigation costs were not recoverable save for the filing fee. As such, the tenants' monetary claim is dismissed without leave to reapply with the exception of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on January 1, 2016 on a fixed term until December 31, 2016 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated December 9, 2015. The monthly rent began as \$1,850.00 payable on the 1st day of each month. A security deposit of \$925.00 and a pet damage deposit of \$925.00 were paid on January 1, 2016.

The tenants seek an order cancelling the 1 month notice dated January 24, 2019.

Both parties agreed that on January 24, 2019, the landlords served the tenants with the 1 Month Notice dated January 24, 2019. The 1 Month Notice sets out an effective end of tenancy date of February 28, 2019 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property.

The details of cause listed on the notice states:

The tenant's cat has repeated sprayed our personal space, causing permanent damage, tenants have not taken responsibility of goods damaged.

During the hearing the landlords also clarified that the second reason for cause listed was made in error as there has not been any illegal activity by the tenants. As such, this portion of the 1 month notice dated January 24, 2019 was cancelled by the landlords.

The landlords claim that the tenants have been harassing the landlords through verbal abuse. The landlords clarified that “we feel...verbally harassed by the tenants” and have referenced submitted evidence in the form of text message exchanges between the two parties. The landlords have referenced text messages titled, “Chat with Landlady Natalie” which state in part,

?? You're the one who told me you got those holes around your mouth from giving BJs.

My place smells like food. Perhaps you should require that all tenants only eat isagenix shakes.

And you- my fist red flag with you was bitching about poor Manuela, and slamming the door in her face when she came to collect her mail.

Seriously- if you're in therapy, it's not working. You act like the whole world around you is out to get you.

Are you just mad because we won't agree to your illegal rent increase?

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You're the one who told me that Nelson has the same holes around his penis.

How else would I come for that.

I said you need MORE. Much more, clearly.

Now then- Natalie: cease and desist.

You know damn well that up until this moment I have been respectful to you. You have slammed a door in my face, the constant barrage of texts. You have no idea how loud you guys have always been, because I haven't sent you text after text when you disturbed our Quiet Enjoyment.

Child Services? At least I stay home with my kid, and don't farm out his care to both nannie and day care while staying home.

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The tenants disputed the landlords' claims stating that what has transpired is nothing more than a verbal disagreement on how people talk to each other.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of both parties and find that the landlords have properly served the tenants with the 1 month notice dated January 24, 2019 as per the Act.

In this case, the landlords have claimed that the tenants have been “verbally harassing” them which constitutes significant interference or unreasonably disturbing another occupant/landlord.

The definition of harassment is aggressive pressure or intimidation. I find through the description of the evidence submission by the landlords that there is no harassment as defined. What appears to the landlords as “verbal harassment” is a disagreement on how a person would speak to another regarding demeanor and content. As such, I find that this falls short of the test required in ending a tenancy under this reason for cause selected by the landlords. The tenants’ application to cancel the 1 month notice dated January 24, 2019 is granted. The 1 month notice is set aside and the tenancy shall continue.

The tenants having been successful are also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold one-time \$100.00 from the monthly rent due upon receipt of this decision.

Conclusion

The tenants’ application is granted. The 1 month notice is cancelled and the tenancy continues.

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: March 18, 2019

Residential Tenancy Branch