



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC, LAT, FF

Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause dated and received November 5, 2019. By amendments they also apply to cancel a later ten day Notice to End Tenancy for unpaid rent received in early December, to set conditions on the landlord's right of entry and for a monetary award for out of pocket expenses related to the application and for damages related to what they see as a loss of quiet enjoyment of the property.

Regarding the ten day Notice, it would appear that the tenants attempted to pay the December rent by electronic transfer, the landlord refused that method of payment and thus the rent was late. The landlord reports that after issuing the ten day Notice he decided to accept electronic transfers of money for rent (at least for the time being) and he withdraws the ten day Notice.

Regarding the tenants' monetary claim, at the start of the first hearing the parties were informed that this matter had been given a priority hearing date because it involved a notice to end the tenancy and that Rule 2.3 of the Rules of Procedure prohibit the bringing of "unrelated" claims. The claim for money and the claim for cancellation of a notice to end tenancy are, in my view, unrelated in this case and I exercised my discretion not to deal with monetary claim. It is dismissed with leave for the tenants to re-apply.

Issue(s) to be Decided

Have the tenants given cause as described in the Notice to end this tenancy? Have the tenants shown good cause why they should be entitled to change the locks or to restrict the landlord's right of entry?

Background and Evidence

The rental unit is a three bedroom house. There have been three rental agreements over the age of this tenancy, which started in November 2014. The current tenancy agreement started in May 2017. The monthly rent is \$2824.90 due on the first of each month, in advance. The landlord holds a \$1325.00 security deposit and a \$100.00 pet damage deposit.

The one month Notice to End Tenancy for cause claims:

1. The tenants have been repeatedly late paying rent,
2. The tenants have allowed an unreasonable number of occupants in the home,
3. The tenants or a person permitted on the property has,
 - a. Significantly interfered with or unreasonable disturbed another occupant or the landlord,
 - b. Seriously jeopardized the health or safety or lawful right or interest of the another occupant or the landlord,
 - c. Put the landlord's property at significant risk.
4. The tenants or a person permitted on the property has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Proof of any of these allegations is cause for eviction under s. 47 of the *Residential Tenancy Act* (the "Act").

When giving a tenant a notice of this nature a landlord is required to complete the area titled "Details of Cause." Here, the landlord has referred to an addendum; a four page document attached to the Notice.

The addendum outlines that the tenants have been late paying rent for June 2016, October 2017, January 2018, April 2018, May 2019 and October 2019 as well as “5 other times” not particularized.

The addendum claims, generally, that: the tenants have been unlawfully smoking cannabis inside and on the back deck even though it was agreed there would be no smoking, and that they are partying on the deck with over 40 people without permission. Some guests stayed overnight contrary to the tenancy agreement. Some of the landlord’s neighbours have complained.

The addendum claims the tenants are using the house as a business and that the power supply is not up to their computer demands.

It says they are overloading the deck with “over 20 people” and it could collapse.

The addendum claims the tenants have changed the locks without the landlord’s consent or giving him a key. It also claims the tenants have unreasonably interfered with his access to conduct repairs and to inspect.

It claims that the tenants have trespassed and destroyed neighbours’ property; that they are trying to extort the landlord by asking for a two month Notice to End Tenancy and that that have vindictively run the clothes washer without water in an attempt to damage it.

The addendum claims the landlord feels the tenants are trying to take advantage of his health, having had a kidney transplant two years ago, and that they call him names because of how he looks. They threaten him with laws and regulations to scare him.

Last, the addendum claims the tenants are taking their garbage out to the lane on the wrong days, allowing wildlife to scavenge on it.

The landlord Mr. R. gave very general evidence about how he had “let a lot slide” with these tenants, about a rent increase dispute last spring that was resolved between the parties. He says his repairman fixed the washing machine last April and indicate to him that the tenants were washing with no water. It is not clear this was related to the tenants at that time.

He says he wrote to the tenants about a pipe issue and they responded with a long list of things they wanted fixed. I had been very frustrating.

The tenants had reported a leak in the basement. The landlord had determined the leak came from a pipe behind the wall under the kitchen sink and that a major repair was required. The landlord was of the view that the tenants were being unreasonable about permitting entry for him and for his repairman. At one point and despite the fact the kitchen sink could not be used until repairs were done, the tenants were demanding 24 hours written notice of entry.

In November the tenants asked about electricity. The landlord is under the impression they are operating a lot of computer equipment in an old house with only 80 or 90 amp service. The landlord attended the rental unit to conduct an inspection and was met by a policeman. The tenants had called the police to be there during the inspection. Further, the tenants attempted to bar his entrance to their office space in the lower level. In addition, his key did not work in the back door lock though it worked fine nine days later.

The landlord briefly mentioned the complaint of smoking cannabis on the deck. He says it started in early 2019 at tenant parties and he let it go. He says neighbours have complained about the parties. There was no evidence from any neighbour.

He says he thinks people are staying over after parties because he sees their cars parked there all night (the landlord lives next door in his own house).

He says that on at least one day, the tenants left their uncollected garbage in the lane overnight and the neighbours complained.

In regard to late payment the landlord I informed the parties that Residential Tenancy Policy Guideline 38, "Repeated Late Payment of Rent" indicates that three late payment are required to substantiate a claim of "repeated" late payment of rent and that if the late payments are far apart they might not be considered to be "repeated." I determined at hearing that a late payment in June 2016 or in October 2017 is too old to form a basis for a determination of "repeated" late and that I would not consider them.

The landlord reported that he was mistaken when he claimed that the tenants were late in April 2018 as alleged in the addendum attached to the ten day Notice. Rather, he

says, they were late in February 2019. He produced the tenants' rent cheque for that month. It was marked as returned due to "insufficient funds" on February 5.

The landlord says the tenant Ms. C.R. did not drop off the May 2019 rent until May 2. He produces his bank statement showing that the rent was deposited to his account on that day.

He says the tenants were late in October 2019 and that he gave a ten day Notice as a result.

Last, he says the January 2018 rent was late due to an "nsf" cheque. He filed a copy of the tenants' rent cheque. It shows that it was dishonoured due to "insufficient funds."

Ms. V.R. testified for the landlord. She is his wife. She says her husband always fixes things quickly at the rental unit. She says the inspection conducted on November was the first one in five years. She was surprised that there was a policeman there.

The tenant Ms. C.R. relates her version of the leak repair story from October and November 2019. The landlord was out of the country at the time but appears to have tried to attend to the leak on his return a few days later. She adduces video evidence of the landlord coming into the yard and going to the outside area of the house where the leak repair is to take place. She seems to be upset that the landlord is there without notice, though the landlord and the tenants had been expecting the repairman to be there already.

She is somewhat upset the landlord would not accept rent by electronic transfers.

She states she does not feel safe anymore and that's why she had the policeman there for the landlord's inspection. She wants the landlord to give 24 hours written notice to enter at any time, in writing. No texts.

She notes that the landlord sent an email on December 2 indicating that the ten day Notice for unpaid rent "supersedes" the one month Notice she'd already received. She thinks that might invalidate the one month Notice, though the Residential Tenancy Branch told her it didn't.

She admits the tenants were late with rent for January 2018. She says they paid an extra \$20.00 to cover the landlord's bank fees for having to deal with the bad cheque.

She denies the tenants were late in April 2018 (the month the landlord was mistaken about).

She denies the tenants were late in May 2019.

She says that the October 2019 rent was paid by electronic transfer on time but the landlord refused it and so the tenants paid cash two and a half days later.

The tenant Ms. C.R. denies any locks have been changed.

The tenant Mr. C.R. testified. He thinks the landlord wants his daughter to move in, a proposition strongly denied by Ms. V.R.

Analysis

I have reviewed and considered all the evidence presented during this hearing though I may not refer to it all in this decision.

The One Month Notice Generally

I find that the landlord's email accompanying the ten day Notice to End Tenancy for unpaid rent, though perhaps "superseding" the outstanding one month Notice, did not annul it or render it void somehow. It would supersede the December 31 effective date of the one month Notice by imposing an earlier date; ten days after service of the ten day Notice.

Repeated Late Payment of Rent

I find the tenants were late paying rent in January 2018. They were late paying rent in February 2019 too, but that late payment has not been cited in the landlord's Details of Cause addendum and so I discount it. They were late again in October 2019 though I find they tried to pay by electronic transfer and were rebuffed, causing the lateness.

The landlord has not proved the tenants were late paying May 2019 rent. The landlord's bank statement only shows when the money was deposited by him, not when it was received by him or delivered to his home.

The landlord has not proved the tenants were late in April 2018. He admitted that was a wrong date.

In result, the tenants have been late paying rent on one, possibly two of the dates cited in the Details of Cause addendum. As noted in Guideline 38, the tenant must be late at least three times to be repeated late.

The landlord has not proved that, as of the date of the one month Notice, the tenants had been repeatedly late.

Unreasonable Number of Occupants

An occupant is a person who is either living there or is “occupying” the premises in the sense of having legal entitlement to possession it. The landlord has not proved that anyone but the tenants and their daughter are occupying the rental unit.

Significant Interference / Unreasonable Disturbance

The disturbance of a neighbour does not qualify as a violation of this section. The landlord has failed prove on a balance of probabilities that the tenants have done anything to justify an eviction under this section.

Seriously Jeopardized the Health or Safety or Lawful Right or Interest the Landlord

The fact that the landlord is in ill health and is experiencing heightened conflict with his tenants does not qualify as a violation of this section. The parties have lived with each other for five years. In the last year they have found reason to disagree with each other and obvious resentments have arisen. Each has tried to determine and enforce what he or she sees as his or her legal rights. None of the evidence presented during this hearing showed conduct by the tenants that would justify eviction under this subsection.

The allegation concerning the running of the washing machine without water, an allegation denied by the tenants, has not been proved on a balance of probabilities.

The evidence shows the landlord signed the local government authorization for the tenants’ business. Obviously, he cannot complain about it now. There is no objective

evidence showing that power consumption, which the tenants pay for, is at such a level as to pose a risk of any kind.

Taking out the garbage on the wrong day cannot, in my view, form the basis for the eviction of a tenant.

Put the Landlord's Property at Significant Risk

The only item of evidence that might relate to this claim in the one month Notice is the allegation that the tenants had too many people on their deck during a party. No evidence was provided from which it could objectively be determined what the capacity of that deck might be. In these circumstances I determine that a violation of this subsection of s. 47 of the *Act* has not been proven.

I would suggest that the landlord have a qualified person determine the maximum capacity of the deck and formally inform the tenants, so that all may be safe in the future.

Illegal Activity Likely to Jeopardize a Lawful Right or Interest of the Landlord

The landlord has not shown the tenants or either of them to have engaged in any illegal activity. The Details of Cause addendum refers to "unlawful smoking of cannabis" however it is my understanding that smoking cannabis is no longer illegal for adults. Smoking in violation of a tenancy agreement is a breach of the agreement but it is not "illegal" within the meaning of that word in s. 47 of the *Act*.

The Tenants' Request Re: Locks and Access

The evidence does not show on a balance of probabilities that the tenants have any reasonable ground for being afraid of this landlord. Indeed, the correspondence adduced at this hearing and the evidence indicate that he is a pleasant and reasonable person.

The line between a tenant's right to exclusive possession of a rental unit and the landlord's right to enter can be a vague one. I wish to make clear to the parties that a landlord may not enter premises unless the landlord either has permission from one of the tenants or has given the notice required by law. Exceptions exist in the case of

emergency when property is being damaged, abandonment or where an entry order has been issued.

A tenant may not refuse the entry of his or her landlord when proper notice has been given. The tenant need not be there and the landlord may enter even if the tenant is not there. The tenant may have someone there in their stead if they wish. A landlord is entitled to see the entire rental unit and is free to take pictures. If a tenant has something in the nature of personal belongings he or she does not wish the landlord to see, then it's up to the tenant to remove or cover them.

If a tenant feels a landlord is abusing the power of entry then on application an arbitrator will restrict the landlord's right of entry. In extreme cases a tenant may be authorized to change locks without the landlord having a key.

The evidence presented in this matter does not persuade me the landlord's right of entry should be restricted or that the locks should be changed to further restrict him. Of significance is the video taken from the tenants' security cameras on the day last fall when the landlord's workman was expected to come by to fix the leaking pipe.

The workman was late and the tenants were rightfully contacting the landlord about it. The landlord arrived in the yard of the rental unit. He walked around the back deck to the area where some work was anticipated. The tenants saw him, came out to speak to him then went back inside. The landlord remained outside on the deck; out of sight of the camera.

There is nothing observably wrong in the landlord's conduct in this video. It should be noted that if a visit has been arranged for a workman to attend a rental unit, there is no particular reason a landlord cannot attend to monitor his workman and the work. It appears the landlord was there in anticipation of the workman, who showed up sometime later.

I dismiss the tenants' request for a restriction on the landlord's right of entry or to change the locks.

Conclusion

The tenants' application to cancel the one month Notice to End Tenancy dated November 5, 2019 is allowed. The Notice is hereby cancelled.

The tenants' request for a restriction on the landlord's right of entry or to change the locks, is dismissed.

As the tenants have had divided success, I award them recover of half the \$100.00 filing fee. I authorize them to reduce their next rent due by \$50.00 in full satisfaction of the 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 17, 2020

Residential Tenancy Branch