



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 13, 2020 ("One Month Notice"), for an order directing the Landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of their filing fee.

The Tenant, L.H., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

In describing the hearing process to the Parties, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Before they testified, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. I noted that in this circumstance, the Tenants indicated different matters of dispute on the Application, the most urgent of which was the Application to set aside a One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants' request to set aside the One Month Notice and to recover their filing fee at this proceeding. Therefore, the Tenants' other claim is dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2019, with a monthly rent of \$1,400.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$700.00, and no pet damage deposit.

The Parties agreed that the Landlord served the Tenants with the One Month Notice in person on January 13, 2020. The One Month Notice was signed and dated January 13, 2020, had the rental unit address, gives the vacancy effective date as February 13, 2020, which is corrected to February 29, 2020, pursuant to section 53 of the Act. The grounds listed on the One Month Notice for the eviction are as follows:

- The Tenant allowed an unreasonable number of occupants in the unit/site;
- 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; and/or
 - ▶ put the Landlord's property at significant risk;
- The 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; and/or
- ▶ jeopardized a lawful right or interest of another occupant or the landlord.
- The Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit, and
- the Tenant has assigned or sublet the rental unit without the Landlord's written consent.

In a box on the One Month Notice labelled "Details of Cause(s)", the Landlord wrote:

The Tenant has sublet the unit without Landlord's information to a third person who has engaged in a physical violence with the other tenant to an extent where this violence has disturbed the quality of life & peace of mind of other tenants at the site. Since the units are tenanted to the other persons who are assisted living with the [Society], we don't want to jeopardize the safety of any of the tenants at our site.

[reproduced as written]

In the hearing, the Landlord also commented on the number of vehicles that the Tenants have in the common parking area, and that the Tenants have an unauthorized cat in the rental unit. However, the Landlord did not raise these issues in the One Month Notice or give the Tenants notice of these matters; therefore, I will not consider submissions on these points, as it would be administratively unfair to the Tenants not to have had advance notice of such claims, which would have allowed them to prepare their response in advance of the hearing.

January 12th Incident

In the hearing, the Parties described different versions of the same incident that they say occurred in the residential property on January 12, 2020, which the Landlord said warranted service of the One Month Notice. The Landlord prefaced his explanation of his version of events by saying that the Tenants have allowed a woman to live in the rental unit without his permission. He said that this amounts to an unlawful sublet. The Landlord said that this woman was involved in an altercation with another tenant on January 12, 2020, and that "there was blood everywhere, as a result." He said the police came.

The Landlord said he went to the residential property to check on the situation on

January 12, 2020, and he served the Tenants with the One Month Notice on January 13, 2020. He said another tenant said a fight happened with the woman who is living in the Tenants' rental unit.

The Tenant said the Landlord misunderstood what happened. "We do have a friend staying with us who was going through an abusive split and wanted to stay with us temporarily." He also said: "there was no fight." The Tenant said there was a home invasion through one of the other units, and that the laundry room door was damaged in this process. He said: "We [including the friend staying with them] had nothing to do with it. He forced his way into [unit] #5. It was no one we knew. He broke the door down. We called the police, and I confronted him until the police came. He was arrested and he's still in jail." The Tenant said that there was blood, because the stranger was hurt when he broke down the door.

The Tenant said: "On January 12th, the Landlord forced his way in and then started taking pictures of things. There was no notice for this visit. It was all a misunderstanding – all a mistake."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The burden of proof in this situation is set out in Rule 6.6:

Rule 6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the evidence before me, I find that the Landlord has not provided sufficient evidence to confirm the One Month Notice on a balance of probabilities. The Landlord referred to hearsay evidence, which is admissible, but which is of lesser persuasive value than is direct evidence, which the Tenant provided. Further, the Landlord was not at the residential property when the incident happened on January 12, 2020; however, the Tenant was in attendance and testified that he called the police and distracted an intruder until the police arrived. I find it more likely than not that the Tenant would call the police on an intruder, rather than on his friend, if she were involved in an altercation, as the Landlord's testimony has stated. When I consider the testimony and other evidence to which I was directed in the hearing overall, I find I prefer the Tenants' version of events over that of the Landlord.

In terms of the Landlord's claim on the One Month Notice that:

- The Tenant allowed an unreasonable number of occupants in the unit/site; and
- the Tenant has assigned or sublet the rental unit without the Landlord's written consent.

I find that the Landlord has not provided sufficient evidence to establish either point on a balance of probabilities. The Landlord did not address the matter of an "unreasonable number of tenants" in the hearing.

Further, in terms of a sublet or assignment of the rental unit, section 1 of the Act states that a sublet is defined as follows:

"sublease agreement" means a tenancy agreement

(a) under which

(i) the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and

(ii) the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and

(b) that specifies the date on which the tenancy under the sublease agreement ends.

I find that the Tenants' friend who was staying with them does not fit within this definition. There is no evidence before me that the Tenants transferred their rights under the tenancy agreement to this person. I find that the Tenants were helping a friend in a difficult situation and that this is not a ground on which to evict a tenant.

Based on the evidence before me, I find that the Landlord has not met his burden of proof to establish the validity of the One Month Notice. I, therefore, cancel the One Month Notice, and I find that the Landlord is not entitled to an order of possession in this set of circumstances. I find the Tenants are successful in their Application to cancel the One Month Notice. Given their success in this matter, I award the Tenants' with recovery of their \$100.00 Application filing fee. I authorize the Tenants to reduce one upcoming rent payment by \$100.00 in satisfaction of this award.

Conclusion

The Tenants' Application to cancel the One Month Notice is successful, because the Landlord did not provide sufficient evidence to establish any grounds set out on the One Month Notice. The One Month Notice is, therefore, cancelled and is of no force or effect. The tenancy will continue until ended in accordance with the Act.

The Tenants are awarded recovery of the \$100.00 Application filing fee. The Tenants are authorized to reduce one upcoming rent payment by \$100.00 in satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 25, 2020

Residential Tenancy Branch