



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

On September 22, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated September 21, 2020, (“the One Month Notice”).

The matter was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

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.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties testified that the tenancy began in September 2018 and is on a month to month basis. Rent in the amount of \$950.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00.

The Landlord served the One Month Notice to the Tenant in person on September 21, 2020. The Notice has an effective date (the date the Tenant must move out) of October 31, 2020.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

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 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 or the Landlord*
- *Jeopardize a lawful right or interest of another occupant or the Landlord*

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice on September 22, 2020 within the required time frame.

The Landlord provided testimony on the reasons why the tenancy should end. I have summarized the Landlord's testimony as follows:

- Other occupants of the rental unit have been disturbed by the Tenant's behaviour.
- The Tenant dropped garbage on the Landlord's doorstep three times.
- On September 2, 2020 the Tenant called him an animal and made a comment that someone should shoot him.
- The Landlord was removing the Tenant's bottles from the electrical room when the Tenant appeared, and the parties were each pushing against a door resulting in a bag of empties hitting the Landlord's partner's face.
- The Landlord believes the Tenant threw eggs at another tenant's property.
- The Tenant was late paying rent in March and April 2020.
- The Tenant hangs rags on her deck which get wet and may attract mold.
- The Tenant put signs up on her unit deck that said, "you are an animal" and "you are a monster"

- The Tenant called the RCMP and reported that the Landlord was naked in view of her /others.
- The Tenant was taking photographs of the Landlord's partners daughter.

The Landlord provided copies of signed and dated letters from other occupants who live at the residential property indicating they have been frequently disturbed by the Tenants loud swearing and abusive language and explosive behaviour.

The Landlord provided a photograph showing the Tenant in the alley immediately after garbage was thrown on their deck.

The Landlord provided a copy of an email dated September 28, 2020 from a maintenance person that indicates the Tenant threw eggs onto his workstation. The Landlord provided another letter from a person who witnessed this incident.

The Landlord provided a copy of an email dated August 19, 2020 from a person that indicates the Tenant was taking photos of her while she was sitting inside a private residence on the rental property.

In response to the Landlord's testimony, the Tenant testified that the Landlords notice to end tenancy is retaliation due to her refusal to write him a letter to support the eviction of another occupant at the rental property. The Tenant testified that in July 2020 the Landlord said he would remember her refusal to help him and he hung up the phone on her.

The Tenant provided testimony in response to the Landlord's testimony that is summarized as follows:

- She never put garbage on the Landlord's doorstep.
- She has had sheets hanging on her balcony for privacy reasons for the past two years and the Landlord has never previously mentioned it.
- The Landlord permitted her to store her empty bottles in the hydro room for two years before he entered and started throwing them away. The Landlord would not permit her to remove them resulting in the Tenant attempting to push her way in against the door and the Landlord pushing back. The Tenant testified this physical incident resulted in her getting scratched.
- She never threatened the Landlord or said, "shoot the Landlord".
- The local credit union was closed due to covid so she went to bank in a nearby town to pay the rent.
- The egg incident was not her; she never threw eggs at another tenants property.

- She had a sign up on her deck for one week; however, it was not directed at the Landlord, rather it was for the Tenants who were subsequently evicted.
- Yes, she called the RCMP because she observed the Landlord naked in full view installing a camera and she found it eerie.
- She never took photographs of the Landlord's partner or their guests. She stated she does not own a camera; only a cell phone.

The Tenant provided photographs of the sheets covering the railings of her deck.

The Tenant provided a copy of a letter dated August 21, 2020 she sent to the Landlord indicating she is feeling harassed and intimidated by the Landlords actions of watching out their window at all hours of the day and tracking who comes and goes.

The Tenant submitted that the Landlord never spoke to her or issued her a warning about any complaints he received regarding her yelling and disturbing others. The Tenant submitted that the letters provided by the Landlord do not provide the dates that the alleged incidents occurred.

The Tenant submitted that the Landlord has not proven the case against her, and she would like to maintain the tenancy.

Analysis

In the matter before me, the Landlord has the burden to prove that the reasons for ending the tenancy in the Notice are valid and sufficient. Based on the evidence and testimony before me, I make the following findings:

The Tenant has refuted responsibility for the majority of the Landlord's allegations. When two parties provide differing but equally believable testimony on an issue, the applicant must provide the better or stronger evidence to prove the claim/ allegation.

There are a number of concerns raised by the Landlord that I find do not rise to a level to justify ending the tenancy. The evidence regarding two late payment of rent; the deck coverings; the Tenant's signs; the police complaint regarding nudity; and taking photographs is insufficient reason to end the tenancy.

With respect to the Landlord's evidence that the Tenant disturbed other occupants of the rental unit, there is insufficient evidence from the Landlord that he ever raised the issue with the Tenant and/or issued a warning/ caution letter to the Tenant. I find that

the Tenant should have been given an opportunity to respond to the allegations at the time the incidents occurred.

The Landlord provided testimony on a couple of issues that I find to be concerning. With respect to the incident in the electrical room, I find that the Tenant could have avoided this physical incident altogether. The Tenant noticed the Landlord removing her empties from the electrical room and tried to push her way into the room causing the conflict. The testimony is that the pushing incident caused one person to be struck and the other to be scratched. The Tenant could have dealt with the issue at the time or after the fact without engaging in physical behavior.

In addition, the Landlord has provided the stronger evidence that the Tenant was responsible for throwing eggs on a maintenance persons workstation. The Landlord provided an email from the maintenance person and a statement from a witness to the incident.

While I understand that the Tenant feels harassed and intimidated by the Landlord and feels that the notice to end tenancy was issued out of retaliation, I find that the incidents described above establish sufficient reason to end the tenancy. There is no tolerance for a person taking physical action against another person in a residential tenancy.

I find that the Tenant's actions amount to seriously jeopardized the health or safety or lawful right of the Landlord and an unreasonably disturbance to a maintenance person.

The Tenant's application to cancel the One Month Notice is dismissed. The tenancy is ending.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession on the effective date of the notice,

The Landlord is granted an order of possession effective no later than 1:00 pm on October 31, 2020, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated September 21, 2020, is dismissed.

The Landlord is granted an order of possession effective no later than 1:00 pm on October 31, 2020, after service on the Tenant.

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: October 23, 2020

Residential Tenancy Branch