

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes

CNC OPC MNDC FF

Introduction

This matter was convened as a result of applications brought on by the tenant and the landlord.

The tenant seeks to cancel a One (1) Month Notice to End Tenancy for Cause (the Notice), issued by the landlord on February 20, 2009.

The landlord seeks to have the Notice upheld and seeks an Order of Possession. The landlord further seeks compensation for one month's rent for loss of revenue.

Each party seeks to recover the cost of their filing fee from the other.

I was not properly provided with a copy of the One Month Notice to End Tenancy. However, it is the submission by both parties, and it is not disputed or misunderstood by the parties that the Notice exists and the reasons stipulated in the Notice are pertaining to Section 47(1)(d)(i) and (ii) of the Residential Tenancy Act (the Act). Effectively, the landlord has issued the One Month Notice to End Tenancy stating that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and, that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Both parties attended the conference call hearing and each was given an opportunity to present evidence and respond to submissions. At the outset of the hearing both parties agreed each had received the evidence of the other and had no additional evidence to bring forward, no additional information, or additional testimonial submissions to put forward in this hearing; and, that this matter be adjudicated on the merits of their applications and submissions into evidence.

Issue(s) to be decided

Was there sufficient cause to issue a One Month Notice to end the tenancy ? If so,

Is the landlord entitled to an Order of Possession?

Are the parties entitled to the monetary amounts claimed?

Background and Evidence

In this type of application (when a tenant disputes a Notice to End a Tenancy for Cause), the burden of proof rests with the landlord to prove that the Notice was properly and validly issued for the causes stated.

This tenancy began September 01, 2006. Rent in the amount of \$1500 per month is payable, in advance, on the last day of each month, and the tenancy is on a month to month tenancy agreement.

The evidence submitted into this hearing makes it apparent the tenancy is contentious and stressful for both parties. Both parties submitted some dated communication between them revealing that issues between the parties are long-standing

In summary, the tenant disputes the cause / reasons stated in the One Month Notice to End as follows:

- The tenant alleges she has been tolerant toward the landlord while the landlord has neglected their responsibilities to her.
- The tenant alleges she took matters into her own hands and involved the City, “when the landlord refused to deal with (a) 2nd infestation of rodents”, and, “after years of bullying, and failures (by the landlord) to perform repairs or maintenance,
- “I have been extremely tolerant putting up with years of no maintenance or completing repairs, unannounced visits by property owners and adult children and confrontational, angry attitudes”.
- The tenant thinks the Notice is the result of her complaint to the City in February, 2009 which resulted in a letter to the landlord to engage in certain remedies of the rental unit.
- In this regard the tenant claims the basis for the Notice is not valid as it was issued as retaliation for her call to the City, and not for the reasons indicated by

the landlord.

- Simply stated, the tenant is frustrated with the landlord, and has not held back her frustration from the landlord in both her actions and her words.

In summary, the landlord addresses their burden of proof for issuing the Notice as follows:

- The Notice was given because of the tenant's conduct toward the landlord. The landlord denies it was because the tenant called the City.
- the tenant has, and continues to be "unreasonable in her actions, threats, and words toward the landlord and other tenants on our property . . .with . . . lies and over- exaggerations".
- On one occasion, the tenant contacted the landlord and,"bullied and yelled and defamed my dead father".
- The landlord goes on to say that, "we cannot work with a tenant who will not be reasonable in her requests and will not allow us to inspect the property".
- The landlord does not deny the tenant's information that there are outstanding issues in the rental home that require remediation; but rather, again in summary, the landlord takes issue with the tenant's approach to bringing resolution to these issues, and that her approach is, "vindictive", and not in good faith, and,
- therefore her conduct amounts to interference with the landlord, and the landlord's ability to resolve issues in the tenancy.
- The landlord also submits that the tenant's conduct has extended to unreasonably disturbing another occupant of the landlord's property.
- As well, the landlord claims the tenant's exchanges with them have been insensitive and needlessly negative.
- Simply stated, the landlord is weary of dealing with the tenant's style of how she engages them to resolve issues.

Analysis

As previously stated, in this type of application the burden rests with the landlord to prove that the Notice was appropriately issued for the cause stated.

One of the tenant's submissions into evidence is recorded telephone conversations with the landlord in which only the tenant is aware the conversations are being recorded.

The tenant advises that her motive in respect to this evidence is to show the landlord's

attitude towards the tenant's issues and she was not aware of the laws pertaining to Privacy. I have listened to these conversations. Aside from the legal implications as it pertains to them as evidence, this recording can only offer questionable evidence, in that the conversations are contrived, one-sided, and wrought with the spectre of manipulation toward a desired response. Therefore, I attribute no weight to this portion of the tenant's evidence.

I have carefully read the submissions of both these applications and reflected on the limited testimony of the parties.

I am convinced both the tenant and the landlord ought to be better informed about their respective responsibilities and legal obligations toward the other. I note some of their differences may be the result of different expectations – which can be resolved by the parties simply acting within their respective responsibilities in accordance with **Sections 32 and 33** of the Residential Tenancy Act: **Landlord and Tenant obligations to Repair and Maintain**

I accept the landlord's submission that they have always strived to have a respectful relationship with all their tenants and it is evident that their communication with this tenant has been restrained and cautious, even through a time of personal difficulty, and even while telling the tenant they would prefer she simply vacate the rental unit. However, I am also able to see how some of the landlord's responses may be interpreted as indifference by this tenant.

I find the tenant has made it difficult for the landlord to help her, or to obtain an accurate understanding of the problems to which she demands remedies. The tenant has treated many issues of the tenancy as emergencies, calling in services and trades and circumventing the requirement to inform and afford the landlord an opportunity to resolve – what amounts to be the landlord's problems to resolve.

I find the tenant's approach and communication with the landlord has been harsh and aggressive. Her communications with the landlord have been needlessly lengthy and contentious, when simple and matter-of-fact exchanges would have sufficed. I am confident her communications have negatively affected the landlord / tenant relationship

and in so doing cannot but have disturbed the landlord. It ought not to be a surprise to her that the landlord sought to end the tenancy. However, I am also confident that the type of problem tenancy which has evolved here does not occur in isolation.

My deliberation is whether there has been *significant* interference or *unreasonable* disturbance by the tenant of another occupant or the landlord, or, if the tenant has *seriously* jeopardized the health or safety or lawful right of another occupant or the landlord. On the preponderance of the evidence, I find there has not been *significant* or *sufficient* cause, so as to warrant an end to the tenancy. However, the tenant's conduct came perilously close to providing cause, and my finding is not an endorsement of her choice of conduct toward the landlord.

If the tenancy relationship does not improve, the landlord can determine to serve another Notice to End Tenancy for Cause. The tenancy relationship is fragile and both parties should proceed with a view to avoid its further erosion.

Conclusion

I order the Landlord's Notice to End Tenancy for Cause dated February 20, 2009 is hereby set aside and is of no force or effect, and the tenancy, for now, continues.

The landlord's application is dismissed.

As the tenant is successful in their application I grant the tenant recovery of their filing fee in the amount of \$50. **I order** that this amount can be deducted by the tenant from a future rent.

Dated April 28, 2009.