



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, MNDC, OLC, ERP, PSF, RR

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated August 29, 2011. The tenant was also seeking a monetary order, an Order that the landlord comply with the Act, an order to compel the landlord to complete emergency repairs, an order that the landlord provide services and facilities required by law and a rent abatement.

Both parties appeared and gave testimony in turn.

Preliminary Matter 1:

The tenant/applicant initiated a request for an adjournment because the tenant's advocate was not able to represent the tenant due to a death in the family.

The person representing the tenant stated that more time was needed to arrange for an advocate. The tenant's representative argued that they had a limited time to work with his advocate and due to his age and the fact that English was his second language, felt the tenant would be unable to represent himself. The representative stated that the agency providing legal advocacy could not provide another advocate right away and the tenant testified that he was advised to seek an adjournment.

Rule 6.1 of the Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if *"written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding."*

In some circumstances proceedings can be adjourned after the hearing has commenced. However, there is a mandatory requirement that the Dispute Resolution Officer, (DRO), must look at the oral or written submissions of the parties; and must consider whether the purpose for which the adjournment is sought will contribute to the

resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose] and whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding. The DRO must also weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and then to assess the possible prejudice to each party.

In this instance, the hearing was on the tenant's application submitted on September 1, 2011, with the hearing scheduled for September 29, 2011. Information and guidance is available without appointment to applicants and respondents on-line, by telephone and in-person at the Residential Tenancy Branch. I found that there was insufficient support to prove that the applicant did not have a fair opportunity to gather information and make evidentiary submissions. I also found that the tenant had never obtained the landlord's agreement with respect to the tenant's need for an adjournment. As this application was to dispute a Notice to End Tenancy, in which the burden of proof is actually on the respondent, I found that the hearing should not be adjourned and under these circumstances, I found that delaying the hearing would be unfairly prejudicial to the respondent.

Accordingly, I found that there was not adequate justification under the Act and Rules of Procedure to support imposing an adjournment on the other party. Therefore the tenant's request was denied and the hearing proceeded as scheduled.

The tenant was able to get his son to assist him with translation and the presentation of his case.

Preliminary Matter 2:

With respect to the tenant's monetary claim, and requests that the landlord comply with the Act, I find that Rule 2.3 of the Dispute Resolution Proceedings Rules of Procedure provides that in the course of the dispute resolution proceeding, where the Dispute Resolution Officer determines that it is appropriate to do so, he or she may dismiss unrelated disputes contained in a single application..

I find that the tenant's a monetary claims, and requests for order that the landlord comply with the Act to complete emergency repairs and provide services and facilities required by law are matters that are separate and apart from the issue of whether the One Month Notice to End Tenancy for Cause should be cancelled. Therefore, I dismiss these portions of the tenant's application with leave to reapply if the tenant intends to pursue these other matters.

Issue(s) to be Decided

The remaining issue to be determined, based on the testimony and the evidence is whether the criteria to support a One-Month Notice to End Tenancy under section 47 of the *Residential Tenancy Act*, (the *Act*), has been met, or whether the notice should be cancelled

The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence: One Month Notice

The tenancy began on September 15, 2001. The current rent is \$300.00 and a security deposit of \$150.00 was paid.

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated August 29, 2011 showing an effective date of September 30, 2011. The landlord testified that the Notice was served on the tenant by posting it on the tenant's door on August 29, 2011. The One-Month Notice to Notice to End Tenancy for Cause indicated that:

- the tenant had been repeatedly late in paying the rent,
- the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- the tenant seriously jeopardized the health, safety or lawful right of others, and
- the tenant put the landlord's property at significant risk.

The landlord testified that the One Month Notice was issued because the tenant had the tenant had paid the rent late on more than three occasions and the landlord provided documentary evidence to confirm that these late payments had occurred. The landlord testified that the landlord had repeatedly issued Ten Day Notice to End Tenancy for Unpaid Rent to the tenant. The landlord testified that the rent had subsequently been paid after the first day of the month when it was due.

In addition to the above, the landlord gave testimony and provided evidence about serious concerns regarding the conduct of this tenant. The landlord testified that many verbal and written complaints had been received about the tenant failing to control his dog in the common areas, the tenant smoking in common areas, the tenant using foul language and raising his voice in communicating with other residents or the landlord's contractors and the tenant causing excessive noise with his TV or barking of his dog. The landlord testified that, after the tenant took it upon himself to disconnect fire detectors in his suite, the fire department had to attend the complex as these devices

are remotely monitored. The landlord stated that the tenant was also not cooperative with the plumbing maintenance contractor who came to fix the tenant's toilet and the contractor complained that the tenant had engaged in a verbal confrontation with him. The landlord testified that on one occasion, the tenant had acted in a threatening manner towards the landlord and the landlord found it necessary to make a report to the police.

The landlord testified that a previous One Month Notice to End Tenancy for Cause was already issued to the tenant in 2010 for similar conduct, but the landlord subsequently waived the Notice and the tenant was given another chance to improve his conduct in the complex. However, according to the landlord, the tenant's disruptive conduct did not stop and grew worse. The landlord testified that they no longer want the tenancy to continue. The landlord provided a witness and written testimony from other tenants with respect to the disruptive conduct.

The tenant acknowledged that rent was paid late on several occasions, but attributed this to the landlord failing to cash the tenant's cheques on the first day of the month.

The tenant disputed all of the other allegations and testified that there were likely a few residents in the complex who were persecuting the tenant for personal reasons and who were likely generating most of the complaints. The tenant denied threatening or verbally abusing the landlord and the plumbing maintenance contractor. The tenant denied smoking in the common areas or leaving his dog unleashed or unattended. The tenant also denied turning his T.V. too loud or allowing his dog to bark incessantly. With respect to the heat/fire alarms, the tenant acknowledged disconnecting the device as it was repeatedly going off and making a loud sound.

Analysis:

I accept the landlord's and the tenant's verbal testimony that there have been repeated late payments of rent during the tenancy and I find that this justifies the One Month Notice to End Tenancy for Cause issued by the landlord. I also find that the tenant's tampering with the heat-sensor alarm placed the landlord's property in jeopardy. For the reasons above, I find that the Tenant's Application to request that the Notice be cancelled is not supported by the facts and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order.

I find that the landlord had posted the One Month Notice to End Tenancy for Cause on August 29, 2011. Section 90 of the Act provides that a posted Notice given or served

by attaching a copy of the document to a door or other place, is deemed to be served on the 3rd day after it is attached. Therefore, a notice posted on August 29, would be deemed to be served on September 1, 2011.

In this instance, the One Month Notice to End Tenancy for Cause dated August 29, 2011 indicated that the effective date would be September 30, 2011.

However as I have determined that the tenant was deemed served on September 1, 2011, I find that a One Month Notice to End Tenancy for Cause received on September 1, could not be effective under the Act until October 31, 2011.

Section 53(1) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable. Subsection (2) provides that, if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. Subsection (3) provides that, In the case of a notice to end a tenancy, if the effective date stated in the Notice is any day other than the day before the day rent is due, then the effective date is deemed to be the day before the day in the month that rent is payable under the tenancy agreement that complies with the required notice period.

Accordingly, I find that the Order of Possession will be effective October 31, 2011.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective October 31, 2011 at 1:00 p.m. This Order must be served on the Applicant tenant and may be enforced by the Supreme Court if necessary.

This decision is final and binding 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: September 29, 2011.

Residential Tenancy Branch