



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, LAT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to change the locks to the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that she received the landlord's 1 Month Notice posted on her door on March 8, 2014, and the landlord's 10 Day Notice posted on her door on April 2, 2014. The landlord testified that she received copies of the tenant's original dispute resolution hearing package the tenant sent by registered mail on March 15, 2013, and the tenant's amended hearing package sent by the tenant by registered mail on April 4, 2014. These amendments added a request to cancel the 10 Day Notice and to have the locks changed. Both parties confirmed that they received one another's written evidence packages. I am satisfied that the parties served one another with all of the above documents in accordance with the *Act*.

At the beginning of the hearing, the landlord confirmed that the tenant paid her April 2014 monthly rent on the day after the landlord posted the 10 Day Notice on her door. As the landlord was no longer pursuing an end to this tenancy based on the 10 Day Notice, the tenant withdrew her application to cancel the 10 Day Notice. The tenant's application to cancel the 10 Day Notice is hereby withdrawn.

The landlord confirmed that she had not submitted her own application for dispute resolution. She testified that she tried to apply for dispute resolution but was told by a Residential Tenancy Branch (RTB) official that she could not do so, but could ask to apply for dispute resolution at this hearing. I informed the landlord that she must have

misunderstood the information provided to her by the RTB official, as there is no possibility that anyone from the RTB would tell a party that they could make an application for dispute resolution during the course of hearing. The legislation is very clear as to the steps that need to be taken to formally commence an application for dispute resolution, including Special Rules for serving the Respondent with a copy of an application for dispute resolution (section 89(1) and 89(2) of the Act).

At the beginning of this hearing, I asked the landlord repeatedly if she was seeking anything specific at this hearing. After three attempts, I was able to determine that the landlord was asking for this tenancy to end on April 30, 2014, in accordance with her 1 Month Notice. Although even then, the landlord was unclear on this point, I advised the parties that I was interpreting her statements to mean that she was making an oral request for an Order of Possession should the tenant's application to cancel the 1 Month Notice be dismissed. It would appear that the ability to make an oral request for an Order of Possession is what the landlord was told she could ask for when she spoke with the RTB official prior to this hearing.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued to the landlord to change or install locks for this rental unit?

Background and Evidence

This periodic tenancy for one room in the basement of this rental unit commenced on January 29, 2014. There are two other separate basement rooms in this rental home, which share common areas in the basement with the tenant. Monthly rent for this rental unit is set at \$380.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$190.00 security deposit paid on or about January 29, 2014.

The tenant entered into written evidence a copy of the 1 Month Notice, requiring her to end this tenancy by April 30, 2014. In that Notice, the landlord cited the following reasons for the issuance of the 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.*

The landlord submitted 12 pages of written evidence. Eight of these pages were her descriptions of the various events and incidents that prompted her to issue the tenant the notices to end tenancy. The remainder of the landlord's written evidence were letters from the tenant, a copy of their Residential Tenancy Agreement (the Agreement), and rent receipts. The landlord did not provide anything in writing from any current or former tenants or anyone else. She testified that the other tenants and former tenants were all working and could not or (would not) participate in this teleconference hearing.

The landlord's written evidence included what would appear to be a recurring dispute between her, the tenant, and at times the other tenants in this rental building (including tenants who live on the main floor) with respect to who has been turning off the thermostat in the common area in the basement. The landlord's written evidence and sworn testimony maintain that the tenant has repeatedly turned the heat off, despite being advised at the start of this tenancy that no one should touch the thermostat. The tenant entered written evidence that she was told that each rental unit had individual thermostats for climate control. At the hearing, the tenant gave sworn testimony that she has not touched the thermostat and would not do so.

The landlord's written evidence also outlined her account of interactions between the tenant and other tenants who were living in the other two basement rooms when this tenancy began in late January 2014. The landlord's written evidence maintained that one of these other tenants claimed that the tenant pushed her twice on February 11, 2014. The tenant's written evidence claimed that the other tenant pushed the tenant on that date. Some of the landlord's written evidence alleged that the tenants who then resided in the other basement rooms were worried about their physical safety due to the tenant's threatening behaviours. The landlord was similarly concerned. The landlord provided written evidence that one of the basement tenants vacated the rental unit on February 27, 2014, and the other basement tenant moved out on March 30, 2014. At the hearing, the tenant gave undisputed sworn testimony that she saw notices to end tenancy posted on both of the other tenant's basement doors issued by the landlord. Both parties agreed that the tenant has been the only person living in the basement rooms in the rental unit since March 30, 2014.

At the hearing, the landlord described her main reason for seeking an end to this tenancy for cause was because the tenant needs to see a psychiatrist because she has mental health issues. The landlord said that she worked in the mental health wing of a hospital for many years and recognizes the extent of the tenant's problems. She said that the tenant cannot get along with other people in a residential setting and needs to find accommodations somewhere else. The landlord said that she cannot rent to other tenants in the basement because she expects the tenant to exhibit the same behaviours

which require treatment. She also said that the tenant continues to disrupt the lives of the tenants elsewhere on the main floor of this rental dwelling.

The tenant gave sworn oral testimony and written evidence that it was the other tenants who initiated the problems that led to the end of their tenancies by the landlord. The tenant maintained that the landlord has been trying to force her out of her basement suite so that she could rent the entire basement to a family, instead of leaving it as three individually rented basement rooms sharing common areas.

The tenant also gave undisputed sworn testimony and written evidence that the landlord decided to remove a deadbolt that protected the security of the basement rooms when this tenancy began. The landlord confirmed that she removed this deadbolt when the tenant refused to let one of the other basement tenants enter the rental unit when she accidentally locked herself out of the basement level of this residence. The landlord said that the only way to ensure that each tenant in their basement room had access to the basement level was to remove the deadbolt.

Analysis

Section 47(1)(d) of the *Act* allows a landlord to end a tenancy for cause if any of the following situations have occurred:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;...

The landlord bears the burden of proof to justify ending a tenancy for cause.

After reviewing the sworn testimony of the parties and their written evidence, I find that the landlord has not submitted sufficient evidence that would demonstrate that she is entitled to end this tenancy for cause for any of the above reasons. While there were clearly problems between the tenant, the former basement tenants and the landlord, two of these other tenancies have already ended and the tenant is currently the only person

living in any of the basement rooms. Although the landlord claimed that the tenant was responsible for problems in this rental property, she did not dispute the tenant's testimony that the landlord issued notices to end tenancy for cause to both of the other two former basement tenants. The landlord produced no written evidence from either the former basement tenants or the tenants who still live on the main floor. None of these individuals participated in the teleconference hearing.

Without any direct supporting evidence, the landlord's request to end this tenancy for cause reduces to her hope that her evidence would be accepted and the tenant's claims to the contrary rejected. However, as noted above, the landlord bears the burden of proof when attempting to end a tenancy. The question of what has occurred in this tenancy is not an easy determination to make with little more than the conflicting verbal testimony of the parties and their written evidence before me.

I find that, whenever a tenant's conduct becomes bothersome to other occupants, the landlord has an obligation to issue a written warning to make sure that the tenant understands what complaints and allegations have been lodged and the precise nature of the conduct that is expected. The tenant also should be told that unacceptable conduct may risk termination of the tenancy if it continues. Ending a tenancy is a drastic measure that is seen as a last resort. I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour.

In this case and since there are no longer other tenants sharing the basement common areas with the tenant, it appears that circumstances have changed since the landlord issued the 1 Month Notice. While I find that the tenant's behaviour may very well have contributed to conflict with other residents in this rental property, I find that the landlord has not sufficiently proven that the tenant's actions have reached the threshold where termination of this tenancy was necessary. Similarly, I am not satisfied that the landlord has demonstrated that arguments regarding the level of heat to be provided within the rental building have placed the landlord's building at risk. I also do not accept that the limited evidence supplied by the landlord enables the landlord to obtain an end to this tenancy for cause for jeopardizing the health or safety of others in this property.

Given the above, I find it necessary to cancel the landlord's 1 Month Notice.

Turning to the issue of the deadbolt, I advised the parties at the hearing that the landlord should take action within 15 days to replace the deadbolt that she removed during the course of this tenancy. After reflecting upon this matter further and considering the circumstances of the arrangement of the rental rooms in the basement

of this rental property, I find that the only location where the tenant should be provided with the additional security of a deadbolt is on the door of her private room, the only area where she has an exclusive right of access. To provide a deadbolt to the entrance to the basement could restrict access to the common areas of the basement and to the entrance doors to the other rented rooms in the basement of this rental building. Given the problems that occurred when the tenant refused to release the deadbolt and allow one of the other tenants to enter the basement level of this suite, I do not find it unusual or unreasonable that the landlord removed the previous deadbolt so as to enable her other basement tenants to access their shared common area and their private basement rooms.

For these reasons, I order the landlord to install a deadbolt **on the inside of the door of the tenant's private room before May 31, 2014**. This deadbolt is to replace the deadbolt that was installed on the entrance door to the basement that was in place when the tenant entered into this Agreement with the landlord. In the event that the landlord does not complete taking this action by May 31, 2014, I order the tenant to reduce her monthly rent by \$50.00 until the month after this work is completed.

In accordance with the powers delegated to me under the *Act* to resolve disputes that are part of the applications before me, I also order the tenant to refrain from touching the thermostat in the common area of the basement during this tenancy.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice. The landlord's 1 Month Notice is cancelled and is of no force or effect.

The landlord's 10 Day Notice is withdrawn and of no force or effect.

I order the landlord to install a deadbolt on the inside of the door of the tenant's private room before May 31, 2014. In the event that the landlord does not complete taking this action by May 31, 2014, I order the tenant to reduce her monthly rent by \$50.00 until the month after this work is completed. The tenant's regular monthly rent reverts to the amount stated in their Agreement on the month after the landlord has completed the work to install a deadbolt on the tenant's door.

I order the tenant to refrain from touching the thermostat in the common area of the basement during this tenancy.

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: April 30, 2014

Residential Tenancy Branch

