



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy; and, orders for compliance, as amended during the hearing. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord indicated she had not received all of the tenant's written submissions and evidence. The tenant provided conflicting testimony as to whether those documents were served upon the landlord. As I was uncertain the landlord had received the tenant's written submissions, I informed the parties that I would hear relevant submissions verbally with exception of the following documentation that I have reviewed and considered:

- I confirmed the accuracy of the 1 Month Notice provided by the tenant with the landlord.
- I confirmed the accuracy of the written tenancy agreement provided by the tenant with the landlord.
- After hearing conflicting testimony with respect to payment of rent, I ordered both parties to provide me with copies of their banking records and indicated that I would hold my decision in abeyance until such time the requested documentation is reviewed. Further evidence was received from both parties on July 17, 2014 with respect to payment of rent. I have considered the additional submissions of both parties.

As the fate of the tenancy was undetermined at the time of the hearing the tenant's requests for orders for compliance were dismissed with leave; however, during the hearing it became apparent the parties were struggling with one issue in particular: the landlord's restricted right to enter the rental unit. Therefore, I have included orders with this decision with regard to that matter. Should the tenancy continue the tenant is at

liberty to make another Application for Dispute Resolution to request any other order for compliance not addressed in this decision.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is it necessary and appropriate to issue orders to the parties with respect to the landlord's restricted right to enter?

Background and Evidence

The tenancy commenced March 1, 2014 and pursuant to the written tenancy agreement the tenants are required to pay the monthly rent of \$2,100.00 by way of two equal payments of \$1,050.00 on the 1st and 15th of the month. The tenants rent two units on the residential property: the 1 bedroom lower suite and the 3 bedroom upper suite. There is also a bachelor unit on the lower level that is tenanted by a third party and a detached studio used by a massage therapist.

On June 26, 2014 the landlord posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the door of the rental unit. The Notice has a stated effective date of July 31, 2014 and indicates the reasons for ending the tenancy are:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Repeated late payment of rent

With respect to repeated payment of rent, the landlord made verbal submissions that the tenants usually pay by direct deposit and the rent payments were received on the following dates:

<i>Payment due date</i>	<i>Date payment received</i>
March 15	March 27
April 1	April 12
April 15	April 27
May 1	?
June 1	June 6
June 15	June 19 and 21

The landlord indicated the tenants became behind in their rent and were supposed to catch up when the tenants received a settlement. The landlord also stated that the tenants paid rent for the entire month of July 2014 on July 4, 2014.

The landlord stated that she had obtained the above information from her banking records and indicated she had attempted to send them to the Branch prior to the hearing but the fax machine was either busy or not responding.

The tenant submitted that the rent has been paid in full and on time during the tenancy as they agreed upon. The tenant claimed the parties had an agreement that the tenant would pay the rent on the second Thursday of every month, to coincide with his pay days. As such, the rent payments may have been made up to three days after the due date of the 1st or 15th. The tenant stated that he had bank records to show the payment of rent as he described.

Considering the drastically different submissions of the parties, I ordered both parties to provide me with copies of their banking records to support their respective positions, which I received and refer to below.

The landlord submitted several banking statements and deposit slips, along with a summary of the information. The summary is somewhat consistent with the landlord's testimony with some notable observations. The tenants made several payments in June 2014 and the payment of rent for the entire month of July 2014 was actually received before the end of June 2014. The tenants made so many payments in June 2014 that, by the end of June 2014 the tenants had actually overpaid rent for July 2014. Also included on the landlord's summary is the notation "[tenant] said rent would be paid in full on 1st of each month from here on starting 1st July" and next to the June 30, 2014 payment the landlord notes there was a direct deposit by the tenant June 30, 2014 and "will continue as per contract"

The tenant submitted several bank statements with withdrawals for rent highlighted. The payments dates reflected on the tenant's bank statements are, for the most part, the same or within a day of the dates recorded by the landlord. The tenant also submits the the tenants have overpaid rent as of June 2014.

A significant discrepancy in the record keeping of both parties concerns the payment of \$1,250.00 on February 27, 2014. The landlord recorded this payment as a \$1,050.00 "deposit" with a \$195.00 overpayment applied to rent due March 1, 2014; whereas the tenant recorded this payment as being a rent payment of \$1,050.00 and presumably the overpayment of \$195.00 applied to the security deposit. Then, on March 13, 2014 a payment of \$625.00 was received which the landlord recorded as rent and the tenant recorded as being for the security deposit.

Significant interference or unreasonable disturbance of another occupant or the landlord; and, seriously jeopardizing the health or safety or lawful right of another occupant or the landlord

The landlord submitted that the events that caused her to issue the 1 Month Notice on June 26, 2014 for the reasons described above were as follows:

1. The landlord smelled marijuana smoke while she was painting the then-vacant bachelor suite in early June 2014 and on another occasion she smelled a strong smell of marijuana smoke when the tenant opened the door to the rental unit. When she confronted the tenant the tenant advised the landlord it was legal for her to smoke marijuana. The landlord submitted that there is a "house rule" that marijuana is not to be smoked inside the house although this is not a term in the written tenancy agreement.

When asked if the other occupants had complained to the landlord about the smell of marijuana, the landlord acknowledged that the bachelor unit is currently tenanted and that tenant has not complained to the landlord of the smell of marijuana smoke. The landlord indicated the tenant of the massage studio complained of something to the landlord and that the landlord was not at liberty to divulge the nature of the complaint.

2. The landlord stated that the massage studio tenant complained to her of an unpleasant altercation with the tenant's son approximately three months prior.

As I did not find the above described verbal submissions sufficient to warrant an end of the tenancy based upon the above described verbal submissions, I did not seek the tenant's responses to the above allegations. The landlord then submitted that the marijuana smoke jeopardizes her health when she is in the building.

Other issue – Landlord's Restricted Right to Enter

The landlord claimed the female tenant and the tenants' son have interfered with the landlord's right to show the rental unit to prospective tenants. The landlord was of the position that she had the tenants' consent to enter.

The tenant responded by stating the landlord entered an hour before the time she indicated in seeking consent.

Although both parties wished to continue to argue whether the landlord had obtained the tenants consent to enter when she did, I found it fruitless to further explore this dispute and proceeded to give both parties information with respect to the landlord's restricted right to enter, along with orders for compliance.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Where there are multiple reasons on a Notice to End Tenancy, the landlord need only prove one of the reasons in order to uphold the Notice.

Repeated late payment of rent

Upon consideration of the evidence provided by both parties with respect to repeated late payment of rent, I find as follows.

A tenancy may be ended for cause where a tenant is repeatedly late paying rent. To consider a tenant to be considered repeatedly late paying rent the tenant must have paid rent late on three or more occasions.

Upon review of the banking records submitted by both parties, I find that the verbal submissions of both parties as to when payments were made are not entirely supported by their respective documentation. For instance, the landlord had stated the July 2014 rent was paid on July 4, 2014 when in fact it was paid by multiple payments received in June 2014. Further, the tenant's submissions that he paid within a few days of the 1st or

15th was not supported by his evidence. Rather, the evidence is consistent in that it appears that the tenants were paying rent every two weeks and I accept that those payment dates coincided with the tenant's paydays as he submitted.

Where a tenant falls behind in rent and proposes a payment plan to the landlord so as to continue the tenancy, if the landlord accepts such an arrangement, I find the landlord is estopped from then trying to evict the tenant where that payment plan was fulfilled. Considering, the tenant paid rent on an alternative schedule for several months without any indication the landlord issued a breach letter to the tenant and the statements on her summary that allude to an agreement between the parties that any arrears would be satisfied and rent would be on time starting July 1, 2014 I am inclined to accept the tenant's submission that the parties had such an agreement. Based upon the balance of probabilities and the evidence before me, I find the landlord accepted the payment plan proposed by the tenant the tenants met that agreed upon payment plan. Therefore, I do not end the tenancy for repeated late payment of rent.

Although I do not end the tenancy for repeated late payment of rent, the tenants should consider themselves on notice that the landlord expects all future rent payment to be on time and in full and failure to meet this requirement may be grounds for ending the tenancy in the future.

Significant interference or unreasonable disturbance of another occupant or the landlord; and, seriously jeopardizing the health or safety or lawful right of another occupant or the landlord

The majority of the landlord's submissions concerned the smoking of marijuana in the rental unit or just outside the building. I find the landlord did not present sufficient evidence to demonstrate that other occupants have been disturbed by the marijuana smoking. Although the landlord argued that her health was jeopardized by the smell of marijuana smoke when she attended the property I find I have insufficient evidence to suggest the landlord's health is in serious jeopardy by the smoking of marijuana prior to her entry into the building. If the tenants are actively smoking marijuana when the landlord attends the property for lawful purposes, I find it reasonable that the landlord's concerns for her own health may be addressed by requesting the tenants not smoke in her presence or while she is in the building. Should the tenants not comply with this request, the landlord may have a basis for arguing their actions jeopardize her health.

Although the tenants may not be prohibited from smoking marijuana in the rental unit or on the property, at the end of the tenancy the tenants may be held responsible for the

cost to remove or remediate the smell of smoke that they, their occupants or their guests have caused.

I find the landlord's vague reference to an "unpleasant altercation" three months prior to the issuance of the 1 Month Notice an insufficient submission to prove the tenancy should end.

In light of the above, I find the landlord has failed to prove, on the balance of probabilities, that the tenants had unreasonably disturbed or significantly interfered with other occupants or the landlord and did not prove that the tenants have significantly jeopardized the health or safety of other occupants or the landlord when the landlord issued the 1 Month Notice on June 26, 2014.

Notice to End Tenancy

Having found the landlord did not establish a basis for issuing a 1 month Notice to End Tenancy for the reasons indicated on June 26, 2014 I cancel that Notice with the effect that this tenancy continues.

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Orders for compliance

Given the disputed verbal testimony concerning the consent the landlord obtained in order to show the rental unit to a prospective tenant I make no finding as to a violation of the Act by either party; however, in order to avoid future disputes concerning the landlord's right to enter, **I make the following ORDERS to BOTH PARTIES:**

During the remainder of this tenancy:

- The landlord must give the tenants written notice of entry in compliance with section 29 of the Act and, depending upon the method of service, give the tenants sufficient time to receive the notice of entry as provided under section 90 of the Act.
- Upon receipt of the landlord's written notice of entry, the tenants, their occupants, or their guests must not interfere with the landlord's entry for the stated purpose indicated on the notice of entry.

Failure to comply with the above orders may result in further remedy by the party suffering a loss as a result of the other party violating the order I have given above.

Below, I have reproduced the sections referred to above, with paragraph 29(1)(b) highlighted for further reference.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

When documents are considered to have been received

90 A document given or served in accordance with section 88[*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

Filing fee

As the tenants were largely successful in this proceeding I award recovery of the filing fee to the tenants. The tenants are authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

The 1 Month Notice issued on June 26, 2014 is set aside and the tenancy continues. I have issued orders to both parties with respect to the landlord's restricted right to enter the rental unit. The tenants have been authorized to deduct \$50.00 from a subsequent rent payment in order to recover the filing fee paid for this application.

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: July 18, 2014

Residential Tenancy Branch

