



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC LRE

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 9, 2014, by the Tenant to cancel a Notice to end tenancy issued for cause; to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to obtain an Order to have the Landlord return the Tenant's personal property.

The hearing was conducted via teleconference and was attended by the Landlord, her translator, and the Tenant. The parties gave affirmed testimony and confirmed receipt of evidence served by the Tenant. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued June 30, 2014 be cancelled or upheld?
2. Has the Tenant proven entitlement to a Monetary Order?
3. Is the Landlord withholding the Tenant's mail?

Background and Evidence

It was undisputed that the parties executed a verbal tenancy agreement for a month to month tenancy that commenced on August 27, 2011. The Tenant is required to pay rent of \$750.00 on the 27th of each month and on or before August 27, 2011 the Tenant paid \$375.00 as the security deposit. The rental unit is a basement suite located directly

below the Landlord's residence which is located on the main floor of a single detached house.

The Tenant testified that on June 30, 2014 her Landlord personally served her with the 1 Month eviction notice, as provided in evidence. The reasons listed on the 1 Month Notice are as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Landlord testified that in April 2014 they gave the Tenant verbal notice to end the tenancy because the Landlord wanted to start her salon business in the basement suite. She stated the Tenant refused to move out and requested the Landlord give her the eviction notice in writing. The Notice was served to the Tenant on June 30, 2014, for reasons as noted above.

Upon further clarification of the reason listed on the 1 Month Notice, the Landlord repeated the reason for issuing the Notice was so she could start her hair salon business. After a third time pointing to the reason selected on the 1 Month Notice the Landlord changed her testimony and stated that the Tenant had called the police on two separate occasions and now her children are afraid to be outside.

The Tenant submitted evidence which indicated the Landlord was involved in a domestic dispute with her spouse on May 28, 2014; during which the Tenant called 911. The evidence included a letter from a victim support worker, the Tenant's written submission, and a copy of an Undertaking Given to a Justice or a Judge. All three documents indicated the Landlord's spouse had been arrested and issued no contact orders against the Landlord and the Tenant.

The Landlord refused to provide testimony regarding the events which occurred on May 28, 2014 stating that was her "personal matter". She insisted that the reason the Tenant was being evicted was because of her desire to start a salon and because the Tenant had called the police.

The Tenant submitted that since the event on May 28, 2014, the Landlord has tried to evict them and has been withholding their mail. She stated that the Landlord holds the key to the mail box for their address and in the past the Landlord would give them their mail. The Tenant argued that they used to get a large amount of mail, which included coupons etc. and for a period of about two weeks after the end of May 2014, they had not received any mail. As a result, the Tenant stated that they decided to have their mail held for pick up by Canada Post, until such time as they could acquire a separate mail box and pay to have their mail forwarded.

The Tenant clarified that at the time she filed her application for Dispute Resolution, she had not incurred all the costs in setting up her new mail box and her mail forwarding so she was not able to submit the receipts. She indicated that she now has all of the receipts.

The Landlord denied withholding the Tenant's mail and stated that they put the Tenant's mail in the mail box attached to their house. The Landlord said she understood that tampering with a person's mail was a Federal Offence. The Landlord indicated that there was one piece of mail inside the house mailbox waiting for the Tenant to pick up. During the course of this hearing the Tenant checked the house mail box and found one card from Canada Post confirming her mail had been forwarded. The Tenant argued that there should have been more cards from Canada Post confirming their mail was being held and forwarded but these were never provided to her.

In closing, the Tenant stated that she wanted to continue living in her current suite and argued that she cannot afford to move or change her mail again.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find the Landlord provided insufficient evidence to prove the Tenant or a person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord. Rather, the undisputed evidence supports that it was the actions or events that occurred between the Landlord and her spouse on May 28, 2014, which caused the disturbance, not the Tenant's actions. Calling 911 when a person is suspected of being physically assaulted is not a breach of the *Residential Tenancy Act* and is not grounds for ending a tenancy. Accordingly, I uphold the Tenant's request to cancel the 1 Month Notice issued June 30, 2014.

Upon review of the Tenant's claim for monetary compensation for costs incurred to redirect their mail, I find that at the time the Tenant filed her application, she had not suffered the loss. Accordingly, I find the Tenant's claim to be premature, and I dismiss it with leave to reapply.

There was insufficient evidence to prove the Landlord is holding any of the Tenant's mail at this time. Therefore, I decline to issue an order for the return of the Tenant's personal property.

Conclusion

As I have determined that the Landlord has not met the requirements of section 47 of the Act to end this tenancy for cause, I am granting the Tenant's application to set aside the 1 Month Notice to End Tenancy and this tenancy shall continue.

The 1 Month Notice to End Tenancy, issued June 30, 2014, is HEREBY CANCELLED and is of no force or effect.

I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

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: September 11, 2014

Residential Tenancy Branch

