



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated October 27, 2014 ("1 Month Notice"), pursuant to section 47; and
- an order to the landlord to make repairs to the rental unit, pursuant to section 33.

The landlord and her agent, MM (collectively "landlord"), and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the building manager of the rental building. The landlord's agent is her son who interpreted for her during the hearing, as English is her second language.

The landlord's agent MM ("MM") testified that the 1 Month Notice was posted to the door of the tenant's rental unit on October 27, 2014. The tenant confirmed that she received the notice on October 28, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 1 Month Notice as declared by the parties.

The tenant testified that she served the landlord with a copy of her application for dispute resolution and hearing notice and first written evidence package on November 5, 2014, by way of registered mail. The tenant provided a Canada Post receipt and tracking number as proof of service, with her application. MM testified that the landlord received the tenant's notice and first written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the above documents as declared by the parties, above.

The tenant testified that she personally served MM with her second written evidence package on November 20, 2014. Section 89(1)(b) permits personal service to the landlord's agent. MM testified that he received the tenant's second written evidence

package on behalf of the landlord, but he did not open the package or review the evidence because he did not wish to do so. In accordance with sections 89 and 90 of the Act, I find that the landlord was served as declared by the parties, above. I advised both parties that I would be considering this evidence as part of the tenant's application as it was served on time and the landlord received it but chose not to review the evidence.

During the hearing, MM corrected the postal code of the landlord stated on the Application, so I amended the tenant's Application to reflect this correction, in accordance with my authority to do so under section 64(3)(c) of the Act, as I find that it does not prejudice any of the parties, to do so.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

Background and Evidence

While I have turned my mind to the documentary evidence, including the photographs, miscellaneous letters, and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The landlord's agent MM testified that this fixed term tenancy began on July 1, 2013 until June 30, 2014, after which it converted to a month to month tenancy. Monthly rent in the amount of \$780.00 is payable on the first day of each month. A security deposit of \$390.00 was paid by the tenant on June 27, 2013, which the landlord continues to hold. A written tenancy agreement governs this tenancy.

The tenant entered into written evidence a copy of the 1 Month Notice. In that notice, requiring the tenant to end this tenancy by December 1, 2014, 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.*

In accordance with subsection 47(4) of the *Act*, the tenant must file her application for dispute resolution within 10 days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on October 28, 2014. The tenant filed her application for dispute resolution on November 5, 2014. Accordingly, the tenant filed within the 10 day limit under the *Act*.

MM testified that the 1 Month Notice was issued for the reasons stated above, and the details of these claims include:

- the tenant's friends broke the side door of the rental building;
- the tenant knocks on other tenants' doors and asks for eggs in the middle of the night;
- the tenant calls the police on other tenants for being loud when she is loud herself;
- the tenant cannot talk normally to the landlord and her family, as she always yells;
- an electrician heard the tenant yelling in her rental unit when he walked by one day;
- the tenant did not let the pest control company in to her rental unit a couple of times and yelled at them when they came to her rental unit;
- the tenant throws garbage off her balcony;
- the tenant spits at the landlord when she is collecting the tenant's garbage below her balcony;
- the tenant puts powder in the hallway of the rental building; and
- the tenant let people into the building 20 days prior to this hearing date and these people broke into vehicles in the garage and took tools from the vehicles and the above people reported to the landlord that the tenant let them into the building.

The tenant denied the majority of the above allegations by the landlord, with the exception of a few explanations. The tenant stated that she put powder around the door entrance to her rental unit, in order to get rid of bed bugs living in the carpet. She bought this powder at her own expense and the landlord did not tell her to stop using the powder. The tenant called police on a neighbour in another unit because that neighbour kicked in the tenant's door. The tenant did not deny entry to her rental unit by the pest control company, as her mother was sick and her two cats had to be taken away if the rental unit was sprayed, so she had to reschedule the appointment with the company who did not agree and stated they would not treat her unit anymore. The tenant denied yelling at the landlord or preventing access to her rental unit by the landlord. The tenant denied letting other people into the building in order to break into cars in the garage, as she called the police on these people and no police spoke to her

after the incident. The tenant testified that the landlord was trying to evict her because she does not like her.

Analysis - 1 Month Notice

Where a tenant applies to dispute a 1 Month Notice within the required time limits, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not provide any witness testimony or documentary evidence for this hearing.

MM stated that he had letters from other tenants regarding this tenant, but he did not provide any letters for this hearing and no witnesses testified on behalf of the landlord. The landlord noted a number of complaints with respect to the tenant, most of which the tenant denied. The landlord did not provide any documentary evidence, including photographs, medical letters, police reports or witness statements, nor did the landlord provide any witness testimony at this hearing. The landlord has not demonstrated that the tenant has exhibited a pattern of behaviour that constitutes significant interference or unreasonable disturbance. The landlord has not demonstrated through police, medical or other evidence, that the tenant has seriously jeopardized the health or safety of the landlord or other occupants. For these reasons, I find that the landlord has not provided sufficient evidence that the tenant or a person permitted on the property by the tenant, unreasonably disturbed, significantly interfered with or caused a serious jeopardy to the health or safety of the landlord or other occupants of the building.

The landlord did not provide any photographic, documentary or witness evidence to show that the tenant broke the side door of the building, a fact that the tenant denies. The landlord has not stated what effect, if any, this alleged side door breaking has had on the landlord or other occupants. The landlord did not provide evidence as to how long the door was broken, if it was fixed, when it was fixed and what problems occurred while it was broken.

There were a number of allegations with the respect to the tenant yelling at people, spitting on the landlord, asking other occupants for eggs, calling the police about other tenants, and throwing garbage off the balcony. The tenant denied all of these allegations, with the exception of calling the police on one tenant for kicking her door in. The landlord did not show how these actions affected other occupants. No witness testimony was provided to verify the landlord's allegations. The landlord did not state the frequency of these alleged actions by the tenant, to demonstrate a pattern of unreasonable disturbance or significant interference. In any event, I do not find them to

be incidents that unreasonably disturbed, significantly interfered with or seriously jeopardized the health or safety of the landlord or other occupants.

I find that the landlord has not shown that the lawful rights of the landlord or any other occupants were “seriously jeopardized” by the tenant’s placing powder around the door entrance of her rental unit, attempting to reschedule bed bug spraying visits, allegedly yelling at the pest control company and allegedly allowing people into the rental building to break into cars. The tenant placing powder around her door entrance likely prevented the spread of bed bugs. Both parties confirmed that the tenant’s rental unit had been sprayed for bed bugs. The tenant denied letting other people into the rental building to break into the cars in the garage. She stated that she called the police herself to report this problem. No police reports or witnesses were produced by the landlord to verify this break-in or the effect of an alleged break-in.

I find that the landlord did not provide sufficient evidence to demonstrate that the tenant “seriously jeopardized” the landlord’s or other occupants’ health or safety, as per section 47(1)(d)(ii). I also find that the landlord did not provide sufficient evidence to demonstrate that the tenant “significantly interfered with” or “unreasonably disturbed” the landlord or other occupants, as per section 47(1)(d)(i). I am not satisfied that the landlord has met the onus, on a balance of probabilities, to end this tenancy for cause, based on the reasons in section 47(1)(d)(i) or (ii).

For the reasons outlined above, I allow the tenant’s application to cancel the 1 Month Notice, dated October 27, 2014. The 1 Month Notice is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*. I advised both parties of this during the hearing.

Analysis - Repairs

Both parties provided lengthy testimony with respect to the repairs requested by the tenant for her rental unit. I do not find it necessary to outline this testimony as both parties agreed that the repairs should be made.

The tenant agreed to cooperate with the landlord to ensure the following repairs are completed, including allowing access to her rental unit. Based on the evidence before me and the landlord’s agreement to complete repairs to the tenant’s rental unit, I issue the following orders to the landlord:

- 1) I order the landlord to install a new linoleum floor in the tenant's rental unit, particularly at the front door entrance, where the linoleum tile is ripping off, by no later than January 30, 2015;
- 2) I order the landlord to replace the old fridge in the tenant's rental unit with a new fridge, by no later than January 5, 2015;
- 3) I order the landlord to complete necessary repairs to ensure that the tenant's bathroom sink is in working order, by no later than January 5, 2015;
- 4) I order the landlord to complete necessary repairs to ensure that the tenant's toilet is in working order, by no later than January 5, 2015;
- 5) I order the landlord to call a new pest control company immediately to have them inspect the tenant's rental unit and complete any required treatments for bed bugs in the tenant's rental unit;
 - a. I order the landlord to begin the inspection by no later than January 2, 2015 and to ensure that all treatments begin within 3 days of their recommendation by the pest control company, unless otherwise agreed upon by both parties.
- 6) I order the landlord to call a plumber or other maintenance person to fix the heat problem in the rental building and ensure that the tenant's rental unit has proper working heat at all times, by no later than January 5, 2015.

Accordingly, I order that the landlord complete the repairs as outlined above, as the landlord has agreed to do so and they are necessary for the rental unit. I advised both parties of this at the hearing.

If the above repairs are not completed by January 31, 2015, the tenant is permitted to reduce her rent by \$100.00 each month beginning on February 1, 2015, \$200.00 each month beginning on April 1, 2015, \$300.00 each month beginning on June 1, 2015, \$400.00 each month beginning on August 1, 2015, and \$500.00 each month beginning on October 1, 2015. The monthly rent reverts to the original amount as allowed in the tenancy agreement as of the month after the above repairs have been completed.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice, dated October 27, 2014. The 1 Month Notice is hereby cancelled and of no force and effect. This tenancy continues.

I order the landlord to complete repairs by the deadlines as outlined above, failing which, I order the tenant to reduce her rent, as outlined above. I order that the monthly rent reverts to the original amount as allowed in the tenancy agreement as of the month after the landlord's repairs have been completed.

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: December 19, 2014

Residential Tenancy Branch

