



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 HARBOUR REALTY LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MT, CNC, MNR, MNDC, OLC, ERP, RP, PSF, LRE, RR, SS, O

Introduction

This Application for Dispute Resolution was made by the tenant on October 29, 2014. The tenant is first requesting to be allowed more time to make the application to cancel a 1-Month Notice to End Tenancy for Cause dated September 30, 2014.

The tenant seeks an order cancelling the 1-Month Notice to End Tenancy for Cause and is also seeking numerous other orders including the following:

- Dispute an additional rent increase,
- Cost of emergency repairs,
- Compensation for damages or loss in the amount of \$10,000.00,
- An order to force the landlord to comply with the Act and agreement,
- An order to require emergency repairs to the unit for health or safety reasons,
- An order to force the landlord to provide services or facilities required by law,
- An order to suspend or set conditions on the landlord's right to enter the unit,
- An order to reduce the rent for repairs, services, facilities not provided,
- And order to serve documents in a different way than required under the Act,

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

Preliminary Matter 1 – Sever Unrelated Claims:

I find that the most pressing matter before me in this application is the issue of whether the 1-Month Notice to End Tenancy for Cause is valid and enforceable or whether the notice should be cancelled as the tenant requests.

I find Rule 2.3 of Dispute Resolution *Proceedings Rules of Procedure* provides that, if in the course of the dispute resolution proceeding the arbitrator determines it appropriate to do so, the arbitrator may dismiss unrelated disputes contained in a single application.

I find that the other unrelated matters contained in the tenant's application must be severed and dealt with separately. The issues relate to the portion of the tenant's application disputing an additional rent increase, payment for the cost of emergency repairs, compensation for damages or loss in the amount of \$10,000.00, the order to force the landlord to comply with the Act and agreement, the order to require emergency repairs to be done, the order to force the landlord to provide services or facilities required by law, the order to suspend or set conditions on the landlord's right to enter the unit, the requested order to reduce the rent for repairs, services facilities not provided, the requested order to serve documents in a different way than required under the Act and "Other".

I find that the tenant's monetary claims and requests for numerous other orders are matters involving several different sections of the Act and are not sufficiently related to the part of the dispute dealing with the 1-Month Notice to End Tenancy for Cause.

For this reason, I will only determine the portion of the tenant's application pertaining to the 1-Month Notice to End Tenancy for Cause. The remaining dispute issues in the tenant's application are therefore dismissed with leave to reapply.

Since the application was made, the tenant apparently received a 10-Day Notice to End Tenancy for Unpaid Rent on December 3, 2014. The hearing today will not deal with the 10-Day Notice as the tenant's application was never amended to include a dispute of this Notice and there was no request to do so at the hearing.

The hearing today will only deal with two matters:

1. Should the tenant be allowed more time to apply to cancel the 1-Month Notice to End Tenancy for Cause dated September 30, 2014? and,
2. If the extension of time is granted, should the 1-Month Notice to End Tenancy for Cause be cancelled?

Preliminary Matter 2 - Request Extension to File:

The tenant requested more time to file to dispute the 1-Month Notice to End Tenancy for Cause. The landlord testified that the Notice was served on the tenant on in person on September 30, 2014 in front of a witness, who appeared and confirmed the service.

The tenant testified that she was prevented from filing to dispute the Notice within the 10-day time limit specified under the Act, which would be by October 10, 2014, due to

her serious medical situation. The tenant did not file to dispute the 1-Month Notice to End Tenancy for Cause until October 29, 2014. The tenant testified that, the reason she missed the deadline was because she was confined to her bed due to an assault on her person that occurred 3 days before the landlord served the Notice.

The tenant submitted a medical report from her doctor dated October 24, 2014. The Dr.'s slip stated that the patient, (the tenant) has fibromyalgia and mental illness. However, the note did not address the impact of this on the tenant's ability to apply within the 10-day deadline to dispute the Notice.

The tenant's witness testified that the tenant was not medically fit enough to dispute the Notice within the 10-day period.

The landlord admitted that the tenant appeared to be injured and bruised when they served the 10-Day Notice. However, the landlord feels that, the tenant still could have disputed the Notice within the 10-day deadline.

Section 47 (1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has either significantly interfered with or unreasonably disturbed another occupant or the landlord; or if the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Once the 1-Month Notice has been issued, section 47(4) provides that a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In this instance the ten-day period would have expired on October 10, 2014. I find that the tenant made application to dispute the notice on October 29, 2014, which was more than ten days after receiving the notice and has asked that the time limit be extended based on the tenant's circumstances.

Section 66 (1) of the Act gives the arbitrator authority to extend some time limits established by the Act in exceptional circumstances. However, the Act specifically states in section 66(3) that the arbitrator has no authority to extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

In this instance the effective date of the landlord's One-Month Notice is October 31, 2014. I find that the tenant did make the application prior to the effective date of the Notice.

Therefore, I find that I do have the statutory authority to extend the date to allow the tenant to file to dispute the notice, provided the tenant has successfully proven that there were exceptional circumstances to explain and justify the delay.

I find that the tenant applied to dispute the Notice 19 days after the deadline to dispute the Notice expired and provided sparse documentary evidence to support her claim of exceptional circumstances. However, despite this fact, I am prepared to accept based on the testimony that, on a balance of probabilities, this tenant was not physically and mentally able to dispute the Notice within the 10-day deadline due to the physical assault that she endured just prior to that period.

I therefore grant the tenant an extension of the time limit for filing to dispute the Notice and the tenant will therefore be permitted to argue the merits of her request to cancel the 1-Month Notice to End Tenancy for Cause.

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 as requested by the tenant.

Background and Evidence

Submitted into evidence, in support the application, was a copy of the One-Month Notice to End Tenancy for Cause dated September 30, 2014 with effective date of October 31, 2014.

The notice alleges that the tenant allowed an unreasonable number of occupants in the unit and the tenant significantly interfered with and or unreasonably disturbed other occupants or the landlord,; seriously jeopardized the health or safety or lawful or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The Notice also states that the tenant engaged in illegal activity that has, or is likely to, damage the landlord's property and adversely affect the quiet enjoyment, security, safety and physical well-being of others. Finally the Notice indicates that the tenant caused extraordinary damage to the rental unit.

In regard to the stated reasons for ending the tenancy, the landlord testified that the tenant lives in a bachelor suite, but consistently has an inordinate number of people either visiting or living with her.

The tenant denied that she has any other occupants living in the unit with her at this time. The tenant testified that she has a number of guests who are friends, former roommates and support persons who come to assist her.

The landlord testified that complaints have been received in the past about the noise level coming from the tenant's unit and also about disruption by the tenant and her guests, sufficient to warrant police attendance.

A copy of a letter from the strata council dated March 30, 2012, reports complaints about noise, screaming, fighting and police attendance. Also stated as a concern of the strata was the tenant's use of her balcony for storage.

The tenant testified that she has resolved the noise problems and has successfully kept the noise level down since that letter was issued

A further letter from the strata council dated March 18, 2014, expresses concerns about the fact that an individual was:

"observed kicking at the door of (the tenant's) unit and yelling to gain access. It was reported that this person is known to the resident and frequently visits the strata lot. This is not the first time this type of behaviour has occurred and several neighbors agreed that this is an ongoing problem."

The landlord stated that the tenant's conduct and that of her guests has been a serious concern for quite some time and that the unit has been damaged by associates of the tenant, including an area of punctured drywall outside the tenant's unit, a damaged door, a broken lock from being forced open and smashed windows caused by rocks being thrown at the tenant's unit by a person with whom the tenant has been known to associate.

The tenant stated that she did not create these problems and played no active part in what was being done by the individuals in question. The tenant argued that the drywall in the common area of the hallway and her door were damaged by another renter living in the same complex at that time. The tenant stated that she had nothing to do with permitting this individual into or around her unit. The tenant testified that the fact she was assaulted by this perpetrator clearly verifies that he was not a friend nor an invited guest permitted on the property by the tenant.

In regard to the rocks thrown at her window, the tenant pointed out that she obviously had not permitted this individual to enter the building and should therefore not be held responsible for the conduct and damage caused by this third party.

The landlord testified that they had repeatedly requested that the tenant remove surplus items crammed into her unit covering virtually all of the available floor space. The landlord testified that the excess material in the unit has forced the landlord and repair technicians to climb over debris to access areas of the unit requiring inspection, maintenance or repairs. Two of the landlord's witnesses accompanied the landlord in

visits to the unit and they both supported the landlord's testimony confirming that this problem has persisted, despite repeated cautions issued to the tenant.

Another witness presented by the landlord, who identified himself as a contractor, testified that the tenant kept denying him access to the unit when he was attempting to do repairs, thereby unduly delaying necessary repairs to the unit. The witness testified that the tenant's unit was too packed with items for him to be able to safely complete the work in the unit. The witness testified that, due to the condition of the premises and the conduct of the tenant, he is not willing to conduct any further repairs to the rental unit while this tenant still resides there.

The tenant denied that her unit is overcrowded and explained that the unit is much clearer than it was before because she has cleaned it up a lot. The tenant testified that she has already removed much of the debris.

The landlord challenged this claim and stated that, as recently as December 3, 2014, when they were at the unit to serve the tenant with a Notice to End Tenancy for Unpaid Rent in person, they found that the tenant's unit was still overflowing with her belongings blocking access. The landlord testified that there was no clear path through the clutter. One of the landlord's witnesses who was present that day, testified that the unit was not safe to enter and appeared to be a fire hazard.

The tenant disputed the above testimony and the tenant's witness supported this claim, stating that the unit was not overcrowded with material and was certainly not unsafe. The tenant's witness stated that the allegation that there is excessive possessions blocking access is not true.

The landlord stated that the tenant was also not cooperating in granting access to the landlord when requested to do so. The landlord testified that the rental unit is for sale and, even though the tenant receives adequate written notice as required under the Act, the tenant is not willing to let the landlord show the unit. In addition, the landlord pointed out that the unit is not in a sufficiently safe, orderly and clean condition to allow showings to potential buyers.

The tenant argued that the landlord had no right to place the unit up for sale without giving the tenant a 3-month notice. The tenant also complained that the realty listing had included her name and private phone number. The tenant pointed out that the landlord has no right to barge into the unit whenever they want. The tenant pointed out that she suffers from a disabling condition and does not feel that she should be bothered by the landlord. The tenant complained that she has been forced to endure black mould, water leaks and a prolonged period with a broken window simply because the landlord refuses to do repairs.

The landlord agreed to remove the tenant's information from the realty listing.

Analysis:

In regard to the allegation of excessive occupants, I find that the landlord has not submitted sufficient evidentiary proof that the tenant allowed an unreasonable number of occupants in the unit.

I accept both the landlord's and the tenant's verbal testimony that there have been some serious incidents of damage and disruption which clearly disturbed others in the building and also affected the tenant as well. Based on the evidence, I find as a fact that this resulted in significant damage to the landlord's property.

Although I accept that the disruptive incidents seemed to revolve around this tenant, as pointed out by the landlord, I find that the landlord has not proven that those directly responsible for the wall damage, ruined door and window damage were actually permitted in the unit by the tenant at the time the damage occurred. I find that the fact the perpetrators were known to have been friends or former friends and guests of the tenant in the past, does not necessarily prove that they were permitted to be on site by this tenant at the time they damaged the property. I find that the perpetrator who damaged the hall wall outside the tenant's unit apparently lived in the complex and was able to access the area. I find that the other vandal was not granted access at all and merely threw rocks at the windows to smash them.

In regard to the landlord's claim that the tenant had allowed the unit to remain cluttered and overcrowded with items, despite being warned that it must be cleared out, I find merit in this claim. I find that the evidence, including testimony from the landlord and the three witnesses, each of whom observed this unit at a different time, supports the landlord's allegation that the condition of this unit genuinely placed the landlord's property at risk.

In regard to the landlord's allegation that the tenant refused to cooperate to grant access, based on the testimony of the landlord, the witnesses and the tenant herself, I find that this allegation also has merit. I find that the tenant has unreasonably interfered with the landlord's right to market and show the unit and thwarted the landlord's efforts to comply with the Act by completing repairs. I find that the tenant has repeatedly violated section 29 of the Act by not allowing access to the landlord and the landlord's agents and still maintains that it is her right to do so. I find that the tenant's belief that the landlord is not permitted to place their property for sale unless they give the tenant notification 3 months in advance has no basis in the Act.

For the reasons above, I find that the tenant's application that the 1-Month Notice be cancelled is not supported by the evidence 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 hereby dismiss the tenant's application requesting an order to cancel the 1-Month Notice to End Tenancy for Cause and issue an Order of Possession in favour of the landlord effective December 31, 2014 at 1:00 p.m. This Order must be served on the Applicant tenant and may be enforced by the Supreme Court if necessary.

The remainder of the issues contained in the tenant's application are severed and dismissed with leave.

Conclusion

The tenant is not successful in the application and the landlord is granted an order of possession based on the 1-Month Notice to End Tenancy for Cause. The remainder of the tenant's application is severed and dismissed with leave.

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 08, 2014

Residential Tenancy Branch

