Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Willow Point Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPC, MNR, MNDC, FF
Tenant: CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of a possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord's agent; the tenant and his advocate. I note that the tenant and his advocate called into the hearing 6 minutes after the start of the hearing due to technical difficulties.

During the hearing the landlord indicated that she had not received a copy of the tenant's Application for Dispute Resolution. The tenant confirmed that he had not served the landlord with a copy of his Application for Dispute Resolution.

Both parties recognize that the tenant has limited cognitive abilities. The tenant submits that he was assisted in making in his Application for Dispute Resolution by an advocate from a different agency than the advocate who was attending this hearing.

Section 59(2) of the *Residential Tenancy Act (Act)* states that an Application for Dispute Resolution must:

a) Be in the applicable approved form,
b) Include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
c) Be accompanied by the fee prescribed in the regulations.

Section 59(3) requires a party who makes an Application for Dispute Resolution must give a copy of the Application within 3 days of making it. However, I note that there are no consequences prescribed in the *Act* or regulation should a party fall to do give a copy to the other party.

Generally, the reason an applicant must provide a copy of the Application to the respondent is so that the respondent can have an understanding of the claim against them and to be able to be prepared to respond to the claim. However, as this hearing

was convened, at least in part, as a result of the landlord's Application seeking to end the tenancy based on a 1 Month Notice to End Tenancy for Cause and as both parties are aware of the tenant's cognitive difficulties, I find, in these limited circumstances, the landlord was not prejudiced by not being informed of the tenant's intent to dispute the Notice, she was prepared and did defend her position as to why the Notice was issued.

I also note that Section 47(4) of the *Act* allows a tenant who receives a notice under Section 47 (1 Month Notice to End Tenancy for Cause) to apply to dispute the notice within 10 days of receiving it by filing an Application for Dispute Resolution with the Residential Tenancy Branch. An Application is considered made as long as the applicant has complied with all of the requirements under Section 59(2). In the case before me, I find the tenant did file an Application in accordance with Section 59(2). The issue of whether or not the tenant applied within the required 10 days is dealt with later in this decision.

I also note that the parties agree the tenant has not been staying in the rental unit since approximately the 5th or 6th of June 2015. The tenant submits that the landlord threatened him with having the police remove him from the residential property. The tenant submits he left his belongings in the unit and he has been staying in a local shelter.

The landlord submits that the tenant had attended their office on June 2, 2015 and that they had advised the tenant that they would be completing an inspection of the rental unit on June 6, 2015 but when they arrived at the unit on June 6, 2015 the tenant was not there. The landlord submits there were two people in the unit that were unknown to them and they stated they did not know where the tenant was or when he was returning but that the tenant had advised them to wait in the unit for the him.

The landlord acknowledges that there may have been a discussion about calling the police if there were any further disturbances but she stated that the police would never assist a landlord in removing possessions from a rental unit as it is out of their jurisdiction.

While I accept that the tenant has not yet paid any rent for the month of June 2015 and the tenant's belongings are still in the rental unit I verbally ordered that until the parties received this decision, depending on the outcome of this decision, the tenancy was still in place and the tenant was able to move back into his unit. I cautioned the tenant, however, he must pay rent or the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Act.*

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 of the *Act.*

Background and Evidence

The parties agreed the tenancy began in January 2015 as a 1 year fixed term tenancy for the monthly rent of $725.00 (including rent of $650.00 and hydro of $75.00) due on the 1st of each month. The landlord submitted that no security deposit had been paid, however the tenant testified that he had paid a security deposit of $200.00.

The landlord submits that every time she attends the rental unit there are at least 3 or 4 occupants in the unit. The landlord submits that the unit is a 1 bedroom unit and is not suitable for this many people. The tenant submits he has only ever had 2 people staying with him and he has never had any more than that at any given time.

The landlord submits that other residents on the residential property have complained about disruptions caused by the tenant and/or his guests. The landlord submits that police have indicated that from January 2015 to mid-May 2015 the police have attended the property on at least 20 occasions.

The landlord submitted the complaints range from noise disturbances to having one of the tenant's guests go to a neighbouring unit to call for an ambulance; the breaking of a window in the rental unit; and the numerous police attendances. The landlord did not provide any documented complaints from any other residents or documented police complaints.

The landlord testified that they had spoken with the tenant on many occasions warning him that his behaviour was not acceptable and that he would need to correct it, but that no written warnings were presented to the tenant.

The tenant submits that they understood the reason for a number of police visits to the rental property was that the police were looking for a person who was the brother of one of the tenant's guests and that the tenant should not be held responsible for police visits to the residential property that were initiated by the police themselves.

The landlord submits that based on the above she issued the tenant a 1 Month Notice to End Tenancy on April 23, 2015 with an effective date of May 31, 2015 citing the tenant has allowed an unreasonable number of occupants in the unit and the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Both parties provided a copy of this Notice in their evidence.

The landlord submitted that she served the tenant with this Notice personally on April 23, 2015 at his unit with a third party witnessing the service. The witness was not available for this hearing to confirm the service.

The tenant stated that he had gone to the landlord's office about a week after April 23, 2015 (April 30, 2015) and was given the Notice to End Tenancy on that date. The landlord confirmed that the tenant did attend the office on May 6, 2015 and asked for a copy of the 1 Month Notice.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

a) There are an unreasonable number of occupants in a rental unit;
b) The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In the case before me, as the tenant disputes when he was served with the Notice, the burden rests with the landlord to provide sufficient corroborating evidence to establish she served the Notice as she has described it. As the landlord has presented no other evidence to do so, I find the landlord has failed to establish the tenant received the 1 Month Notice any earlier than either April 30, 2015 or May 6, 2015.

Even if the tenant received the Notice on April 30, 2015 I find he had until May 10, 2015 to file his Application for Dispute Resolution. The tenant filed his Application on May 7, 2015. I therefore find the tenant filed an Application for Dispute Resolution to dispute the 1 Month Notice within the allowed 10 days after received of the Notice.

As to whether or not the landlord has established cause to end the tenancy, I find again that the tenant disputes the landlord's claims and the landlord has failed to provide any corroborating evidence such as written complaints from other tenants or a full explanation of why the police were attending the property.

In addition, I find that even if the landlord had provided sufficient evidence to establish cause to end the tenancy the landlord has failed to provide any evidence that she had

provided any warnings to the tenant regarding any complaints or the consequences to his tenancy should he fail to change his behaviour.

In relation to the landlord's claim for rent for the month of June 2015, as noted above, I found that the tenancy had not ended, and as such the tenant must pay rent for the month of June 2015. As such, I find the landlord is entitled to a monetary order for the rent.

Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on April 23, 2015 is cancelled and the tenancy remains in full force and effect.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$725.00** comprised of the rent and hydro.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: June 23, 2015

Residential Tenancy Branch