



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC MNSD FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside, or cancel the Landlord's Notice to End Tenancy issued for cause; and I dismiss the balance of the Tenant's claim with leave to re-apply.

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on October 12, 2015. The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's Agent, and the Tenant.

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.

On November 27, 2015 the Tenant submitted 13 pages of evidence to the Residential Tenancy Branch. The Tenant affirmed that she served the Landlord with copies of the same documents that she had served the Residential Tenancy Branch (RTB). The Landlord acknowledged receipt of these documents. As such, I accepted these documents as evidence for these proceedings.

On October 27, 2015 the Landlord submitted 27 pages of evidence and on December 8, 2015 the Landlord submitted 6 pages of evidence to the RTB. The Landlord testified that she did not serve copies of those documents to the Tenant. The Tenant confirmed that she had not been served evidence from the Landlord for this proceeding. As per the

foregoing, I declined to consider the Landlord's October 27, 2015 evidence submission. I did however consider the Landlord's oral testimony and all documents ordered to be submitted after the hearing.

Both parties were provided with the opportunity to present oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued October 3, 2015 be upheld or cancelled?
2. If upheld, did the Landlord appear at the hearing and request an Order of Possession?

Background and Evidence

On March 12, 2015 the Landlord and Tenant entered into a written month to month tenancy agreement that began on April 15, 2015. The tenancy agreement stipulated that rent of \$1,000.00 was due on or before the first of each month and the Tenant was required to pay \$500.00 as the security deposit and \$250.00 as the pet deposit.

The Tenant paid the \$500.00 security deposit on April 20, 2015 by cheque, which was cashed by the Landlord. The Tenant gave the Landlord a separate cheque, cheque # 22 dated April 20, 2015 in the amount of \$250.00 as payment for the pet deposit. The Tenant requested the Landlord not cash the pet deposit payment as she did not have the money in her bank to cover the cheque. The Tenant continues to tell the Landlord not to cash the pet deposit cheque.

The Tenant has not paid rent for October 2015, November 2015, or December 2015. The Tenant has not been issued an Order from the RTB excluding her from having to pay rent. The Tenant continues to reside in the rental unit.

Each party confirmed that they have not entered into any form of written agreement (writing, text, or email) that would excuse the Tenant from paying the pet deposit or the rent.

On October 3, 2015 the Landlord's Agent served the Tenant a 1 Month Notice to end tenancy for Cause in the presence of the Landlord. The 1 Month Notice was issued pursuant to Section 47(1) of the Act listing an effective date of November 15, 2015 for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Residential Tenancy Act only: security or pet deposit was not paid within 30 days as required by the tenancy agreement.

The Landlord testified that the Tenant requested that she not cash the pet deposit cheque when it was first given to her because the Tenant told her she did not have enough money in the bank to cover the payment. The Landlord stated that she thought she still had the original cheque somewhere in her papers. The Landlord submitted that despite her continued requests to cash the pet deposit cheque, the Tenant has always told her not to cash it because she did not have enough money.

The Agent testified that they issued the 1 Month Notice because the Tenant's boyfriend is always staying at the rental unit; the pet deposit has not been paid; the Tenant is doing drugs in the rental unit; the Tenant has caused damage to the rental unit; and the Tenant refuses to pay rent. The Agent argued the Tenant cannot stay rent free forever.

The Agent submitted that the Tenant has been seen yelling, swearing, and screaming at the upstairs tenants in front of their five children. He asserted that the Tenant has also threatened the upstairs tenants. Those children are between the ages of 6 and 14. The Agent asserted that he attended the rental property during one such argument and he witnessed the Tenant using swear words that were so horrible that he was not willing to repeat them during the hearing.

The Landlord asserted that the Tenant has also refused her access to the storage area where the Landlord has stored some of her own possessions. She stated that the storage area is only accessible through the Tenant's rental unit and even though she had given the Tenant 24 hour notice the Tenant refused her access.

The Tenant testified that she entered into a verbal agreement with the Landlord where she would not pay the pet deposit because she told the Landlord that she incurred additional data charges on her phone when their access to the internet was delayed by three weeks. She asserted that her teenage daughter was present during that conversation and that she had submitted a witness statement into evidence that was written by her daughter. The Tenant stated that her daughter was 17 at that time and her daughter is still residing with her in the rental unit.

The Tenant stated that she told the Landlord that she was not going to pay rent because she slipped and fell on water that had been leaking from the fridge. She argued that she was given the notice to end tenancy shortly afterwards so she has not paid rent for October, November or December, 2015. The Tenant noted that this hearing was not scheduled to discuss the non-payment of rent.

The Tenant denied swearing at or in the presence of the upstairs tenants' children. She asserted that she has never spoken to those children except to say hello. She argued

there have been confrontations with the upstairs tenants when they have been playing the piano at 11 o'clock at night and when their dog bit her. She stated it is the upstairs tenants who have been coming after her and not the other way around.

The Tenant submitted that she did not threaten the upstairs tenants or their children. She then stated that the only thing she threatened to do was to call the SPCA on them which she said she has done.

In closing, the Landlord submitted that she did not enter into a verbal agreement with the Tenant that excused the Tenant from having to pay the pet deposit. She confirmed that she had discussions with the Tenant and the upstairs tenants about getting access for the internet hook up but no verbal agreements relating to the nonpayment of the pet deposit were entered into.

The Landlord stated that she appeared at this hearing to request that the 1 Month Notice be upheld. Upon further clarification the Landlord stated that she needed possession of her rental suite and asked that the Tenant be evicted.

Prior to the conclusion of the hearing, I ordered the Landlord to fax copies of the following two documents to me no later than Friday December 18, 2015: (1) a copy of the tenancy agreement; and (2) a copy of the Tenant's cheque issued to the Landlord for payment of the pet deposit. Each party was given the opportunity to ask questions or make comments about this request. Both parties declined to comment on the aforementioned order.

The Tenant requested that her copy of the Decision be mailed to her work address, as listed on the front page of this Decision.

A seven page fax was received from the Landlord on December 11, 2015 at 10:08 p.m. The fax included a copy of the six page tenancy agreement and a copy of the Tenant's cheque issued for the pet deposit.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 47(1) of the *Act* provides that a landlord may end a tenancy by issuing a tenant a 1 Month Notice to end tenancy for cause for reasons including, in part, that: the tenant has allowed an unreasonable number of occupants in the unit/site; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and/or under the Residential Tenancy Act a security or pet deposit was not paid within 30 days as required by the tenancy agreement.

Section 53 of the Act stipulates, in part, that incorrect effective dates are automatically changed as follows:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be issued on the prescribed form and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

In this case rent is payable on the first of each month and the 1 Month Notice was issued on October 3, 2015. Therefore, the November 15, 2015 effective date listed on the Notice is automatically corrected to be November 30, 2015, pursuant to section 51 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

Section 18(2) of the Act stipulates, in part, that if a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 *[limits on amount of deposits]* and 20 *[landlord prohibitions respecting deposits]*.

I accept the undisputed evidence that the parties entered into a written tenancy agreement which required the Tenant to pay a \$250.00 pet deposit as of April 15, 2015. I further accept the undisputed evidence that the Landlord was issued a cheque by the

Tenant on April 20, 2015 as payment for the pet deposit. However, the Tenant has continuously requested that the Landlord not cash her pet deposit cheque because she does not have the money to cover the payment. Accordingly, I find that the requirement payment for the pet deposit remains unpaid.

Upon review of the witness statement written by the Tenant's teenage daughter (the daughter), I afford that statement very little evidentiary weight. While I accept that the daughter may have been present during a conversation between the Landlord and Tenant about internet access, the Tenant's daughter was not present during this hearing and was not available to be cross examined. Furthermore, I find that a child regardless of their age, who depends on their parent for shelter, would be swayed into saying anything in writing in order to protect their access to shelter, as well as their relationship with their parent.

Therefore, in absence of documentary evidence, such as some form of written agreement or acknowledgement, and in the presence of the Landlord's disputed testimony, I do not accept the Tenant's submission that she entered into an agreement with the Landlord which provided that she was no longer required to pay the \$250.00 pet deposit.

Based on the above, I conclude that the Tenant has failed to pay the pet deposit within 30 days as required by the tenancy agreement. Accordingly, I find the Landlord has met the burden of proof to establish cause for ending this tenancy, pursuant to section 47(1)(a) of the *Act*. Accordingly, I dismiss the Tenant's application to set aside or cancel the 1 Month Notice, without leave to reapply.

As the Landlord has met the burden of proof to establish the ground for ending the tenancy regarding the non-payment of the pet deposit, there is no requirement for me to analyze the remaining two grounds listed on the 1 Month Notice.

Section 55 of the *Act* provides that an Order of Possession **must** be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

As indicated above, the Landlord appeared at the hearing and stated that she needed possession of her rental suite. The Landlord then asked that the Tenant be evicted. I've interpreted the aforementioned to be the Landlord's request for an Order of Possession. Accordingly I grant the Landlord an Order of Possession, pursuant to section 55 of the *Act*.

The Tenant requested that a copy of the Decision be sent to her at her work address. As a result, I requested that two copies of the Decision be sent to the Tenant, one to the rental unit address and the second one to the Tenant's work address as she requested.

Conclusion

The Tenant's application was dismissed, without leave to reapply. The Landlord's oral request for an Order of Possession was granted.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and 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: December 15, 2015

Residential Tenancy Branch

