



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 ("the 1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the 1 Month Notice from the landlord and the landlord confirmed receipt of the tenant's application for dispute resolution package. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on May 1, 2008 as a 6 month fixed term tenancy and continued on month to month basis. The rental amount of \$1140.00 is payable on the first of each month. A copy of the residential tenancy agreement was submitted for evidence at this hearing. The landlord testified that she continued to hold the security deposit paid by the tenant at the outset of this tenancy.

The tenant applied to cancel the landlord's 1 Month Notice for Cause, disputing that the landlord had sufficient reason, or cause to end the tenancy. The landlord made an oral application for an Order of Possession based on her 1 Month Notice to End Tenancy. The landlord testified that, on October 8, 2015, she personally served the tenant with a 1 Month Notice to End Tenancy. The tenant confirmed receipt of that notice. The landlord's 1 Month Notice, addressed indicated the grounds to end the tenancy;

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord...
- Tenant or a person permitted on the property by the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to.... adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- Tenant has engaged in illegal activity that has, or is likely to ... jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that other tenants have complained about the tenant, indicating that the tenant has been disruptive in the common laundry room and that she leaves garbage lying around outside of her unit. The landlord testified extensively about the problems she claims to have had with the tenant, providing examples of moving people's laundry; arguing on one occasion about someone moving her laundry; garbage left in the hallway on more than one occasion and trying to address outstanding issues with the tenant. The landlord testified that she had received several complaints from other tenants however there were no copies of letters of complaint submitted by the landlord or other evidence with respect to tenant complaints.

The landlord also testified that the tenant has often yelled or screamed at her when she is trying to address issues including unpaid rent or other tenant complaints. She testified that "it just goes on and on" with the tenant; she refers to the incident reports drafted by the landlord and submitted for this hearing including;

- July 7, 2015: request to enter suite to address pest problem;
- September 15, 2015: inspection follow-up: mould on balcony because of a carpet and big planters; and
- September 20, 2015: reminder re: leaving garbage in hallway.

The tenant provided undisputed testimony that she continues to receive both multiple breach letters and notices to end tenancy (4) from the landlord since she was successful in recouping an overpayment from the landlord in a previous hearing. She submitted evidence of 6 previous residential tenancy branch hearings dated April 2010 through November 2015. Most hearings were successful tenant applications to cancel a notice to end tenancy.

The landlord testified that the tenant has not paid her rent on time over the course of her tenancy however she did not apply to end the tenancy on this ground and provided no

evidence with respect to this concern. The tenant disputed this claim stating that she has paid her rent on time but for two occasions over the last 7 years of the tenancy.

The landlord emphasized that other tenants are bothered by the tenant's behaviour. The landlord's testimony was focussed mainly on her interaction with the tenant. She testified that she has great difficulties interacting with the tenant. The landlord made an oral request for an order of possession if the tenant fails in her application to cancel the 1 Month Notice.

Analysis

While I have turned my mind to all the documentary evidence and testimony submitted by the parties, I have only reproduced in this decision the evidence that is directly relevant to this application. The principal aspects of the tenant's application and the landlord's position with respect to ending this tenancy are laid out in the background and evidence section above. My findings around each issue raised are set out below.

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice.

I note that the landlord also relied on the ground that the tenant has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of the landlord. She presented no evidence, in his testimony or in documentary submissions that the tenant has engaged in any form of illegal activity. Therefore, I will not consider this ground of the notice to end tenancy any further.

The landlord claimed that the tenant has interfered with and/or disturbed the landlord as well as the other tenants in the building. She also claims that the tenant's failure to allow the landlord access to the rental unit has created a jeopardy to the health or safety of other occupants.

I do not find that the tenant significantly interfered with or unreasonably disturbed the landlord. It is reasonable to assume, based on the testimony of the landlord that the landlord has been perturbed by the ongoing arguments between the two parties. However, the standard with which to consider the end of a tenancy is that a landlord or another occupant has been **unreasonably** disturbed or **significantly** interfered with. Based on the testimony of the landlord, and the evidence that she has presented, I do not find that the landlord has provided evidence to meet the burden of proof, on a balance of probabilities that she or the other occupants were **unreasonably** disturbed by the tenant. I find that any disturbance to the landlord is within the realm of the normal

landlord-tenant relationship, including occasional items outside of the rental unit or interaction with another tenant over laundry machine use.

I do not find that the tenant has jeopardized the health or safety of other occupants. There is no evidence that there is an ongoing safety concern or that the tenant has refused completely to allow the landlord to enter the rental unit: she has however requested that the landlord comply with the notice provisions of the *Residential Tenancy Act* regarding accessing the tenant's rental unit and home. The landlord testified that there is necessary action required within the unit with respect to mould and pests. However, the landlord did not present evidence that she has been obstructed – only that she feels she has not been sufficiently accommodated. Again, the standard with which to consider the end of a tenancy is that the tenant has ***seriously jeopardized*** the health or safety of other occupants in the residential premises or the landlord. Based on the testimony of the landlord, and the evidence that she has presented, I do not find that the landlord has provided evidence to meet the burden of proof, on a balance of probabilities that she or the other occupants' health or safety were ***seriously jeopardized***.

I am not satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In this case, the tenant has successfully disputed this notice to end tenancy. The 1 Month Notice to End Tenancy for Cause should be cancelled. The tenancy will continue.

Conclusion

I grant the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause. The tenancy will continue.

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: January 11, 2016

Residential Tenancy Branch

