



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UFI ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC LRE FF

Introduction

This hearing was reconvened from an original hearing date of March 9, 2016. The hearing was scheduled to address 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 pursuant to section 47; for an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and for authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 9:45 am in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 am. The tenant and her counsel attended the hearing. The tenant and her counsel were given a full opportunity to be heard and make submissions.

With respect to service of documents, the tenant testified that she served the landlord with her Application for Dispute Resolution and Notice of the original hearing dated March 9, 2016 by registered mail. Both the landlord and the tenant attended the original hearing. The original hearing lasted approximately 74 minutes. At the original hearing, the tenant was granted an adjournment to this new hearing date. During the original hearing conference call, both the landlord and tenant were advised of the new hearing date: March 30, 2016 at 9:30 am by teleconference.

An interim decision was issued after the original hearing date. That interim decision included the new hearing date. Notices of the Reconvened Hearing date were sent with a copy of the interim decision to each party, tenant and landlord by mail. I find that the landlord was sufficiently advised of this hearing date at the time of the original hearing, in the Interim Decision mailed to him and by way of the Notice of Reconvened Hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on November 1, 2012 as a month to month tenancy with a rental amount of \$765.00 payable on the first of each month. The landlord continues to hold a security deposit in the amount of \$382.50 paid by the tenant on October 10, 2012. As of the date of this hearing, the tenant continues to reside in the rental unit.

The tenant testified that on or about January 18, 2016, the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenant. Within 4 days of receiving the Notice to End Tenancy, the tenant applied to cancel the notice. The Notice to End Tenancy indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or landlord.

The tenant testified that she had a "breakdown" on January 16, 2016 after she witnessed another resident in the building suffer a violent injury. The tenant submitted a multitude of letters as well as evidentiary materials documenting this incident. The tenant submitted documentary evidence with respect to her condition after the incident. The tenant provided sworn undisputed testimony that she has not caused interference or disturbance to other occupants or the landlord and testified that she herself suffered disturbance and interference as a result of activities within the rental unit.

The tenant testified that she has been told by other occupants of the building that the landlord has entered her rental unit without her permission or knowledge. She testified that she is concerned that the landlord is entering her unit improperly.

Analysis

This application by the tenant to cancel the landlord's notice to end tenancy places a burden on the landlord to prove that the notice to end tenancy was served in accordance with the *Act* and that the notice to end tenancy for cause is justified. As the landlord has issued a notice to end tenancy for cause, the onus is on the landlord to show evidence of the grounds to end tenancy on which he relies.

The tenant retained counsel to address this matter and the hearing was adjourned from a previous date. On the previous hearing date, the landlord attended and was advised orally and in writing of the reconvened hearing date. Rule 10.1 of the Rules of Procedure provides that a “dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.”

There is evidence that the landlord was advised of this hearing date. I find that the landlord was sufficiently aware of this hearing date and did not attend. Given that the tenant made efforts to address this dispute resolution matter and that the tenant has been faced with this application and the potential outcome since January 22, 2016 and given that the landlord did not attend this hearing to provide evidence to justify the notice to end tenancy, and in the absence of the landlord's participation in this hearing, **I grant the tenant's application to cancel the notice to end tenancy.**

The tenant also applied for order to suspend or set conditions on the landlord's right to enter the rental unit. The tenant relied on notification from another occupant who informed her that the landlord had entered her unit. The tenant had no other first-hand knowledge or evidence to support this claim. I find that the tenant does not have sufficient evidence or proof to support an application to restrict or suspend the landlord's right to enter the rental unit. However, I provide the section of the *Act* relating to a landlord's entry into a tenant's rental unit for the information of both parties,

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

As the tenant has been successful in her application, I find that she is entitled to recover the \$100.00 filing fee for this application.

Conclusion

I grant the tenant's application to cancel the Notice to End tenancy. The notice is cancelled. The tenancy shall continue.

I caution the landlord to ensure he complies with the provisions of the *Act* as provided above with respect to entry into the tenant's rental unit.

I issue a monetary order in the amount of \$100.00 in favour of the tenant to recover the filing fee for her application.

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: April 14, 2016

Residential Tenancy Branch

