



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF; CNC, MNDC

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application (as amended) pursuant to the Act for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The landlords were both represented. The landlords' agent WS attended. The tenant appeared. All were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The parties admitted service of all documents before me.

Preliminary Issue – Jurisdiction

Various issues in these disputes relate to the tenant's employment by the landlords and subsequent termination.

Subsection 2(1) of the Act sets out that:

2 (1) Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.

“Tenancy agreement” is defined in section 1 of the Act:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Residential Tenancy Policy Guideline, “1. Landlord & Tenant – Responsibility for Residential Premises” states:

The landlord and tenant may enter into a separate agreement authorizing the tenant to provide services for compensation or as rent.

Pursuant to subsection 2(1) and the definition of “tenancy agreement” under the Act, I explained to the parties at the hearing that I only have jurisdiction to deal with the matters arising from the relationship of landlord/tenant and not that of employee/ employer or under a services agreement.

The tenant agreed that his amendment for a monetary order was for compensation under his contract of employment or the services agreement. On this basis, I do not have jurisdiction to consider this portion of the tenant’s claim and decline to consider it. This decision does not interfere with the tenant’s ability to bring this claim before a body of competent jurisdiction.

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

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant’s claim and the landlord’s cross claim and my findings around each are set out below.

This tenancy began 1 May 2012. The parties entered into a written tenancy agreement on 30 April 2012. Monthly rent of \$595.00 is due on the first. The corporate landlord continues to hold the tenant's security deposit in the amount of \$297.50, which was collected at the beginning of the tenancy.

The tenant began acting as a resident caretaker for the landlord on 1 September 2015. The tenant's contract was terminated on or about 18 January 2016. The parties are in a dispute regarding payment of severance for the contract termination. The tenant made attempts to collect his severance from other tenants of the residential property.

The residential property is in the process of being sold by the landlords, which has required multiple showings of the residential property.

On 9 February 2016 the corporate landlord issued the 1 Month Notice. The 1 Month Notice was served by posing to the tenant's door on or about 9 February 2016. The tenant acknowledged service. The 1 Month Notice set out that it was being given as: the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord GS testified that the tenant was uncooperative with providing access to the residential property. The landlord GS referred me to page 64 of the landlord's evidence, which is an email dated 17 December 2015. In that email, the tenant voices his displeasure over having to show the building to prospective purchasers. GS testified that the tenant told other occupants of the residential property that he was upset about having to provide access to the realtors. GS testified that the tenant refused to provide access to his suite. GS referred me to page 71 of the landlord's evidence, which is an email dated 27 January 2016. In that email the tenant insists on being provided with written notice served in accordance with the Act. The landlord GS testified that she provided notice on or about 22 January 2016 by email.

The landlord GS testified that prior to the service contract beginning there were problems in the tenancy. Specifically, the tenant built a shed. The landlord testified that she asked the tenant to remove the shed and he did.

The landlord GS alleges that a tenant in unit 102 has called to say that her quiet enjoyment has been infringed upon. I have not been provided with any testimony or written statement from this tenant.

The agent WS testified that friction developed early in the employment relationship. The agent WS accuses the tenant of "using a condescending tone". The agent WS

testified that the tenant believed that the landlord should be providing gifts for the tenants at Christmas and that when the landlord refused the tenant “used intimidation methods” by suggesting that he would purchase the gifts himself. The agent WS accused the tenant of acting “as if he owns the building”. The agent WS testified that the tenant installed video cameras without permission. The agent WS alleges that the tenant misappropriated funds from the landlord. The agent WS alleged that the tenant answered his door in his underwear when another occupant knocked on the tenant’s door. The agent WS submits that there are far too many issues for the tenant to remain employed or living in the building and that the situation is “unworkable”.

The tenant denies the allegations against him and denies that there are grounds for ending the tenancy. The tenant testified that the rental unit has been his home for the last four years. The tenant testified that the tenants in the residential property are upset because the landlord’s realtor is coming every other day.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. On 9 February 2016, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as the tenant or person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or 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.

The landlord alleges the following conduct in support of the 1 Month Notice:

1. failing to cooperate to show the building to realtors;
2. failing to provide access to his rental unit after notice of entry had been provided by email;
3. building a shed;
4. infringing on quiet enjoyment of another occupant in 102;
5. using a condescending tone;
6. intimidating the landlord by threatening to buy Christmas presents with the tenant’s own money;
7. installing video cameras;
8. acting as if the tenant owns the residential property;

9. misappropriating funds; and
10. answering the door in his underpants.

Items at 1, 6, 7, and 9 are disputes arising out of parties' relationship as employee and employer. The landlord has not persuaded me that these issues would have existed if not for the employment relationship. On this basis, I find that these acts cannot form the basis for the 1 Month Notice. Even if these activities did arise in the context of the landlord-tenant relationship and considered with the conduct that arises purely from that relationship, the conduct did not arise to such a level as to constitute conduct that would be the requirement of "significantly interfered" with or "unreasonably disturbed".

With respect to failure to provide access to the rental unit, the landlord did not provide a notice of entry that complies with sections 29 and 88 of the Act. Accordingly, the tenant was under no obligation to permit entry by the landlord. As such, this cannot form a basis for ending the tenancy.

The shed that was purportedly built has long since been removed. As the tenant complied with the landlord's request to remove the structure, I find that the shed cannot form a basis for ending the tenancy.

The landlord did not provide any statement or testimony from the tenant who is allegedly experiencing infringement of her right to quiet enjoyment. On the surface, that occupant's complaints appear to relate more to the real estate showings, than the tenant's conduct. Further, it appears that any conduct that the occupant dislikes arose in the context of his agency relationship with the landlord. Accordingly, this cannot form a basis for the end of tenancy.

In respect of times 5, 8 and 10, these complaints, while perhaps unpleasant do not rise to the level of "significantly interfered" with or "unreasonably disturbed". Accordingly, they cannot form the basis of an end to tenancy.

On the basis of the landlord's evidence, there is no basis to lawfully end this tenancy. The 1 Month Notice is cancelled.

As the landlord has not been successful in this application, it is not entitled to recover the filing fee paid.

The agent WS asked how the relationship was expected to continue with the level of friction. As mentioned to the landlord's agent at the hearing, general regulation of the

parties' interpersonal relationship is beyond the reach of the Residential Tenancy Branch.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application for monetary compensation is declined on the basis of want of jurisdiction.

The tenant's application to cancel the 1 Month Notice is granted. The 1 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 14, 2016

Residential Tenancy Branch