



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Siesta Rooms 1995 Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MT, CNC, MNDC

Introduction

This hearing was scheduled in response to the tenant's application for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for cause / and a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties attended and gave affirmed testimony.

During the hearing the landlord's agents (the "landlord") confirmed that an order of possession is sought in the event the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located within a single room occupancy ("SRO") building. There is no written tenancy agreement in evidence for the tenancy which began on December 15, 2015. Monthly rent of \$425.00 is due and payable in advance on the first day of each month, and a security deposit of \$212.50 was collected.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated February 11, 2016. The landlord testified that the notice was put into the tenant's mail box on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 31, 2016. The reason identified on the notice in support of its issuance is as follows:

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 tenant filed an application to dispute the notice on April 04, 2016.

The tenant testified that the mail box into which the landlord's notice was delivered, is located in the landlord's office along with mail boxes for all other units located within the building. The tenant testified that her feeling of discomfort around the landlord contributed to her decision not to go into the landlord's office in order to routinely check her mailbox. The landlord testified that when the tenant failed to vacate the unit by the date shown on the notice, he hand delivered the notice to her on April 01, 2016. Subsequently, the tenant filed an application to dispute the notice on April 04, 2016.

As to the reason identified on the notice in support of its issuance, the landlord testified that the tenant's refusal to agree to sign the tenancy agreement reflects the alleged "illegal activity." The tenant testified that the landlord failed to provide a written tenancy agreement in a timely manner, and that ultimately she had certain concerns around how the agreement had been prepared. With the passage of time the parties did not undertake with any success to resolve those concerns directly with each other.

Analysis

Based on the documentary evidence and the affirmed testimony of the parties, I find on a balance of probabilities that the landlord's 1 month notice was served by way of delivery to the tenant's mailbox on February 11, 2016. Section 88 of the Act addresses **How to give or serve documents generally**, and provides in part:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given or served on a person must be given or served in one of the following ways:

- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

Following from the above, I find that service of the 1 month notice complies with the Act.

Pursuant to section 90 of the Act which addresses **When documents are considered to have been received**, I find that the 1 month notice is deemed to have been received on February 14, 2016, which is the 3rd day after it was left in the tenant's mailbox.

Pursuant to section 47(4) of the Act the tenant had 10 days to dispute the notice after its receipt. In this case I find that the 10th day was February 24, 2016. As earlier noted, the tenant filed her application to dispute the notice on April 01, 2016.

As to the reason for her late filing of the application, again, as earlier noted, the tenant testified that her discomfort around the landlord contributed to her choosing not to enter the landlord's office in order to check for mail. In the result, the tenant has applied for more time to make an application to cancel a notice to end tenancy. In this regard, section 66 of the Act addresses **Director's orders: changing time limits**, in part:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) *[starting proceedings]* or 81(4) *[decision on application for review]*.

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

As the effective date of the notice was March 31, 2016, and as the tenant's application to dispute the notice was filed thereafter on April 01, 2016, I am precluded by the legislation from allowing the tenant more time to make an application to cancel the 1 month notice.

Notwithstanding all of the above, I turn my mind once again to section 47 of the Act which provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Further, Residential Tenancy Policy Guideline # 32 speaks to "Illegal Activities," in part: The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have

a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the Arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

Section 13 of the Act addresses **Requirements for tenancy agreements**, and provides in part:

13(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

Additionally, section 12 of the Regulation addresses **Disclosure and form of agreement**, and provides in part:

12(1) A landlord must ensure that a tenancy agreement is

- (a) in writing,
- (b) signed and dated by both the landlord and the tenant,
- (c) in type no smaller than 8 point, and
- (d) written so as to be easily read and understood by a reasonable person.

As well, section 1 of the Act defines "tenancy agreement" as follows:

"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.

In view of all the foregoing, I find that the parties entered into a tenancy agreement effective from December 15, 2015. I further find that even if the tenant's refusal to sign the written tenancy agreement were found to be illegal, the landlord has failed to meet the burden of proving that such a refusal "has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord," and that such a refusal is sufficient to justify termination of the tenancy. Accordingly, the landlord's 1 month notice must be set aside, and the tenancy presently continues in full force and effect.

The various aspects of the tenant's claim for compensation and my related findings are set out immediately below.

\$12.10: *photocopies and use of computer*

\$10.95: *faxing and use of computer*

\$4.00: *faxing*

\$1.00: *photocopies*

\$3.00: *photocopies*

\$4.00: *photocopies*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the tenant's application is hereby dismissed.

\$1,062.50: *partial reduction in rent for the 5 month period beginning from December 15, 2015, arising from alleged breaches of the right to quiet enjoyment*

Variously, the tenant claims that she was "yelled at and physically intimidated" by certain of the landlord's staff, that "rude and slanderous comments" were made about her to her family, that "family and friends have also been denied access to my room," and so on.

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In the absence of sufficient evidence to support the tenant's claim that there have been breaches of her right to quiet enjoyment, the tenant's application for related compensation must be dismissed.

Conclusion

The landlord's notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted.

The tenant's application for miscellaneous compensation is hereby dismissed in its entirety.

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: May 10, 2016

Residential Tenancy Branch