



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 section 47 of the *Residential Tenancy Act* (the "Act") to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

The tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by legal counsel.

The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

This tenancy has been the subject of multiple hearings as noted on the front page of this Decision. The parties acknowledged a longstanding tumultuous relationship.

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

While I have turned my mind to all the documentary evidence, including photographs, voice recordings, miscellaneous letters, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The parties testified that the tenancy began on May 1, 2014 on a month-to-month basis. Rent in the amount of \$1,173.00 is payable on the first of each month. The tenant remitted \$497.50 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated May 31, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the 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
- the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord

Landlord

It is the landlord's position that on more than one occasion, the tenant has denied access to the rental unit after receiving proper notice from the landlord. Most recently, the landlord was attempting to gain access to the rental unit to complete repairs similar to those previously ordered by the Residential Tenancy Branch. Specifically on May 12, 2016 the landlord served written notice to the tenant to advise her that a contractor would conduct repairs to her balcony at 8:00 a.m. on May 24, 2016. The written notice directed the tenant to clear her balcony of all belongs prior to this date. On two occasions on May 24, 2016 the tenant approached the landlord and questioned whether the contractor was still coming. On the second occasion, the tenant became frustrated and raised her voice with the landlord; the landlord in turn shut her office door on the tenant. Legal counsel alluded that this is an instance in which the tenant's inability to contain her emotions disturbed the landlord and other occupants. The landlord contacted the contractor who immediately apologized for their oversight and advised the landlord they could attend the following day. The landlord provided the contractor with the tenant's number to arrange a suitable time.

The contractor did not attend the following day on May 25, 2016, so the landlord scheduled an appointment for May 27, 2016 and provided written notice to the tenant. The written notice, dated May 25, 2015 reminded the tenant to remove all belongings off the balcony. On May 27, 2016, it became evident to the landlord that the tenant's belongings remained on the balcony so the landlord contacted the contractor and cancelled the scheduled appointment. The landlord immediately served written notice to the tenant on May 27, 2016 that the contractor would attend June 2, 2016 at 8:00

a.m. Legal counsel indicated that the tenant's refusal to clear the balcony despite the need for repair affects the value of the landlord's property.

Legal counsel contended that the tenant has insisted she be present for any repairs to her rental unit thereby hindering the repair process. Additionally the tenant has restricted the building maintenance worker from accessing her rental unit to conduct repairs that were previously ordered by the Residential Tenancy Branch. The caretaker testified that she served written notice of entry dated March 25, 2016 in the tenant's mailbox, for installation of a bathroom mirror on March 29, 2016. Despite this notice, the tenant denied the building maintenance worker access to install the mirror on March 29, 2016. Additionally, on March 31, 2016 the caretaker left a written notice of entry in the tenant's mailbox indicating repair work to the floor, door and mirror would be conducted on April 5, 2016. Again the tenant denied entry to the building maintenance worker.

Tenant

The tenant acknowledged receipt of the May 12, 2016 notice which indicated repair work to her balcony would be conducted on May 24, 2016. The tenant testified that she cleared her balcony of all belongings on May 23, 2016 in preparation for the May 24, 2016 work. The tenant acknowledged approaching the landlord on two occasions on May 24, 2016 questioning the whereabouts of the contractor. The tenant denied yelling at the landlord instead she contended she voiced her disappointment that the landlord provided her number to the contractor. The tenant requested the landlord provide her with the contractor's name and number. In the absence of the requested name and number of the contractor from the landlord, the tenant replaced all her belongings on the balcony on May 24, 2016 at around 7:30 p.m. Later this same evening at approximately 10:30 p.m. the tenant spoke to the contractor's receptionist. The receptionist confirmed it was their error for not attending that day to conduct the work. The tenant explained to the receptionist that she had already replaced her belongings on the balcony and did not have time to remove them prior to reporting for work the following day. The tenant advised the receptionist to contact the landlord to reschedule.

The tenant testified that she only received one written notice dated May 12, 2016. The tenant disputed receiving the landlord's written notice dated May 25, 2016 and subsequent notice dated May 27, 2016.

The tenant testified that due to the ongoing disputes between herself and the landlord she does insist on being present for any repairs or access to her rental unit. After a verbal altercation with the building maintenance worker in the spring of 2016, the tenant communicated to the landlord that she would not allow the building maintenance worker

further access to her rental unit. The tenant acknowledged that she refused entry to the building maintenance worker on March 29, 2016 and April 5, 2016 despite written notices from the landlord.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the lawful right of another occupant or landlord. The onus is on the landlord to prove the lawful right was jeopardized by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of written notices and testimony regarding the tenant's refusal to allow the landlord's lawful right to access the rental unit.

Pursuant to section 29 of the *Act*, a landlord may enter a rental unit if given permission by the tenant or written notice is served to the tenant at least 24 hours and not more than 30 days before the entry. The notice must include the purpose of entry and the date and time of entry. The time of entry must be between 8 a.m. and 9 p.m.

There is no dispute that the tenant received proper written notice on May 12, 2016 and the contractor failed to attend the unit to conduct work. The parties have provided conflicting testimony in regards to the second and third notices of entry. Specifically the landlord contended the tenant was issued a written notice on May 25, 2016 and subsequently on May 27, 2016 whereas the tenant denied receiving such notices. Although the caretaker testified to regularly serving past written notices of entry to the tenant she did not testify to having served the May 25, 2016 and May 27, 2016 written notices. In the absence of corroborating evidence I find the last two notices were not served to the tenant. Because I have found the tenant was not served the last two written notices, I find the tenant has not jeopardized the landlord's lawful right of entry in relation to the May 2016 notices.

The tenant does not deny refusing entry to the building maintenance worker on March 29, 2016 and April 5, 2016 on the basis that she did not authorize that particular worker in her rental unit. The *Act* does not require landlords to provide the names of individuals conducting repair work to tenants nor does the *Act* give the tenant the authority to dictate who conducts repairs. Rather the *Act* requires the landlord to provide written notice of the date, time and reason for entry and serve it in accordance with section 88 the *Act*.

Based on the written notices of March 29, 2016 and April 5, 2016 before me, I find the landlord has complied with the section 29 of the *Act*. I further find the landlord served

the two written notices in accordance with section 88 of the *Act*. For these reasons, I find the tenant unlawfully denied the landlord's right of entry to conduct repairs as previously ordered by the Residential Tenancy Branch and dismiss the tenant's application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

As the 1 Month 1 Notices complies in form and content and as the tenant's application has been dismissed I find that the landlord is entitled to an order of possession. I therefore grant an order of possession to the landlord effective July 31, 2016 at 1:00 p.m.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

An order of possession is granted to the landlord effective July 31, 2016 at 1:00 p.m.

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: July 21, 2016

Residential Tenancy Branch