



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC; CNC, MNDC, MNSD, OLC

Introduction

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

- an order of possession for cause pursuant to section 55;

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;

The tenant's agent (the "tenant"), the owner of the rental unit and the owner's agent (collectively the "landlord") attended the hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary - Service of 1 Month Notice

The landlord testified that on July 21, 2016 the property manager served the tenant with the landlord's 1 Month Notice, dated July 15, 2016, by way of posting to the rental unit door where the tenant resides.

The tenant acknowledged receipt of the 1 Month Notice but not until August 1, 2016. The tenant's agent testified that her mother, the tenant first saw the 1 Month Notice posted to her door on August 1, 2016, after returning home from shopping. The tenant's agent testified that the landlord did not post the 1 Month Notice on July 21, 2016 as claimed.

Neither party testified to having directly served or received the 1 Month Notice. The individuals they assert did were not present for the hearing. The landlord did not provide a witnessed proof of service with her application and the date of the 1 Month Notice is not congruent with the date the landlord claims it was served. For these reasons, I am not satisfied beyond a reasonable doubt that the 1 Month Notice was served on July 21, 2016. Therefore I find the 1 Month Notice was received August 1, 2016 as claimed by the tenant.

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 tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to obtain a return of all or a portion of her security deposit?

Is the tenant entitled to an order for the landlord to provide services or facilities required by law?

Background and Evidence

As per the testimony of the parties, the original tenancy began in April of 2011 and was renewed each year. The tenancy was most recently renewed on May 1, 2016 for a fixed term until April 30, 2017. Rent in the amount of \$1,160.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$550.00 at the start of the original tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated July 15, 2016 with an effective date of August 31, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant has allowed an unreasonable number of occupants in the unit/site
- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Landlord

The landlord testified that the first ground to end tenancy, that the tenant allowed an unreasonable number of occupants, was marked in error. The primary reason for the 1 Month Notice was the tenant's continual smoking in the rental unit contrary to the non-smoking clause in her tenancy agreement. The landlord has provided a copy of an inspection report dated September 8, 2015, the tenancy agreement effective May 1, 2016, a warning letter dated May 25, 2016, a complaint letter dated July 13, 2016 and a final letter dated July 14, 2016.

Tenant

The tenant does not dispute smoking within the rental unit rather the tenant seeks more time to find an alternate rental unit. The tenant is seeking reimbursement of \$50.00 per month from the original start date of her tenancy. She claims she has been charged \$50.00 per month for a parking stall that she has been unable to use. She testified that previously the landlord had agreed to reimburse the parking fee.

Landlord Reply

The landlord testified that as per the tenancy agreement parking is included in the rent, however there is no indication it is charged at \$50.00 per month. The landlord acknowledged the tenant does not have a vehicle and consequently the stall is used by someone else. The landlord disputed there was an agreement to reimburse the tenant for parking.

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 significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The onus is on the landlord to prove the significant interference or unreasonable disturbance took place by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of testimony, an inspection report, warning letters and a complaint letter in regards to a breach of a material term. The evidence provided does not show how the tenant's smoking interfered with or unreasonably disturbed others. The complaint letter does not indicate how the smoking affects the writer, only that smoking occurs. For these reasons, I find the landlord has failed to meet her burden in establishing the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Accordingly, I uphold the tenant's application to cancel the 1 Month Notice.

The tenant has provided insufficient evidence to establish she has been charged \$50.00 per month for parking or that the landlord agreed to reimburse her for this at any time. As per the submitted tenancy agreement parking is included in the rent and I therefore find the tenant is entitled to the use of a parking stall. I dismiss the tenant's application for the reimbursement of parking in the amount of \$2,100.00.

The tenant's application to the return of her security deposit is premature as she has not vacated the rental unit. For this reason, this portion of the tenant's application is dismissed with leave to reapply.

Conclusion

The landlord's application for an order of possession in relation to the 1 Month Notice dated July 15, 2016, is dismissed without leave to reapply.

The tenant's application to cancel the 1 Month Notice dated July 15, 2016 is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

The tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

The tenant's application to obtain a return of all or a portion of her security deposit is dismissed with leave to reapply.

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: October 18, 2016

Residential Tenancy Branch

