



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with 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 (the "1 Month Notice") pursuant to section 47;

The tenant, the tenant's advocate (collectively "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 confirmed receipt of the tenant's application for dispute resolution package and the parties confirmed that they had received the other party's evidence. In accordance with sections 89 and 90 of the *Act*, I find that the parties were duly served with the application and evidence packages.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2012 a fixed term until June 30, 2013 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$925.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$450.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated October 24, 2016 by way of posting to her rental unit door. 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 unreasonable 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 or a person permitted on the property by the tenant has put the landlord's property at significant risk
- 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
- 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
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Analysis

While I have turned my mind to all the documentary evidence, including photographs, witness statement, 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 onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant.

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.

Although the landlord has provided testimony and documentary evidence in the form of witness statements indicating that the tenant was noisy, I find the landlord has provided insufficient evidence to establish any noise created by the tenant warrants the end of tenancy. The tenant acknowledged that she had a gathering late last year that lasted into the hours of the early morning and after receiving notification of a noise complaint she testified that she refrained from hosting any more loud gatherings. Upon review of the documentary evidence it becomes clear that the landlord issued only two noise complaints, one on July 4, 2012 and another on May 19, 2016. In the absence of specific dates of noise on the witness statements and the documentation of only two outdated landlord warnings, I find the landlord has failed to establish a repeated pattern of noise that would constitute a significant or unreasonable disturbance.

The landlord testified that in September of 2016, a guest of the tenants was rude and called her inappropriate names. The landlord provided a witness statement that corroborated this incident. The tenant did not dispute this incident and testified that she has not invited this guest back to the rental unit since this incident was reported to her. While I find it probable the incident between the landlord and guest took place I do not find a one-time isolated incident such as this constitutes a significant interference or unreasonable disturbance.

The landlord provided witness statements that describe the tenant's guest as scary, yet the statements do not provide details on what actions this guest took to "scare" them. I find the description of the guest as scary insufficient to prove the guest interfered or disturbed other tenants.

For the above reasons, I find the landlord has failed to prove her burden and the above ground is not adequate for the purpose of ending this tenancy.

2. 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

Although the parties do not dispute that a rock fell off the tenant's deck narrowly missing another occupant below on his deck, I do not find this isolated incident was intentional and therefore dismiss the landlord's application to end the tenancy on this ground.

3. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

The landlord testified that the tenant has begun hoarding and that the possession of 2x4's in the rental unit are a fire hazard. Upon review of the submitted photographs and reflection of the testimony, I find the landlord has failed to establish that the tenant is "hoarding" or that the tenant failed to remove the 2x4's by the deadline provided by the landlord. For these reasons, I dismiss the landlord's application to end the tenancy on the above ground.

4. 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 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 landlord has failed to establish the tenant has engaged in illegal activity, a serious violation of federal, provincial or municipal law. Therefore I dismiss the landlord's application to end the tenancy on this ground.

5. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord testified to a variety of breaches of the tenancy agreement, including but not limited to: excess items stored on the balcony, additional occupants, smoking on the residential premises and failure to maintain reasonable health, cleanliness and sanitary standards.

In order to end a tenancy for a breach of a material term, it is a requirement that the tenant first be notified of the breach in writing and be given an opportunity to correct the breach. *Policy Guideline #8, Unconscionable and Material Terms* establish that the notice of breach must include the following:

- *that there is a problem;*
- *that the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

Upon review of the documentary evidence I find the landlord only notified the tenant in writing of the following breaches:

- excess items stored on the balcony; and
- failure to maintain reasonable health, cleanliness and sanitary standards.

The last letter issued to the tenant, dated June 10, 2016 which speaks to the issue of cleanliness and excess items on the balcony does not specify that if the problem remains past the deadline the tenancy will end. Therefore, the landlord's letter does not meet the full requirements of a breach letter and the landlord's application to end the tenancy on the breach of a material term is dismissed.

Conclusion

The tenant's application to cancel the 1 Month Notice is upheld. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 14, 2016

Residential Tenancy Branch