



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenant requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 47 of the *Act*; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and 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 landlord was represented at the hearing by building manager, C.R. (the “landlord”).

The landlord stated that a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) was posted on the tenant’s door on February 9, 2017. The tenant confirmed receipt of this 1 Month Notice and of the landlord’s evidentiary package. Pursuant to section 88 of the *Act* the tenant is found to have been served with the landlord’s 1 Month Notice and evidentiary package.

The landlord confirmed receipt of the tenant’s Application for Dispute Resolution package (“Tenant’s Application”). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Tenant’s Application.

Issue(s) to be Decided

Can the tenant cancel the landlord’s 1 Month Notice to End Tenancy? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to a return of the filing fee associated with the application?

Background and Evidence

As part of her evidentiary package, the landlord provided a copy of the *Residential Tenancy Agreement* signed between the parties. This agreement demonstrated that this tenancy began on August 1, 2016. Rent was set at \$895.00 per month and deposits of \$447.00 (security) and \$200.00 (pet) continue to be held by the landlord.

On February 9, 2017 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. The reasons cited on the 1 Month Notice are listed as:

- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
- There has been a 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 explained that she has received numerous complaints from residents concerning the behaviour of the tenant's son. This individual does not live in the rental complex but has been seen in the parking lot on numerous occasions acting in a suspicious manner, his girlfriend has been found sleeping in a car parked in the parking lot of the complex and numerous accounts were provided of the tenant's son and his girlfriend engaging in alleged drug trafficking. The landlord provided several letters of support from residents of the building who have explained in detail what they witnessed and the issues that have resulted due to this individual's behaviour.

The landlord stated that she is seeking an End to the Tenancy for cause based on two factors:

- 1) *The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and*
- 2) *There has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after writing notice to do so.*

The landlord explained that the tenant herself has largely been problem free and that all of the issues concerning the tenancy stem from the behaviour of her son who is not named on the tenancy agreement or living in the rental complex.

The tenant denies all issues associated with this notice to end tenancy. She explained that her son and his girlfriend do not live in the apartment and are rarely around the complex. The tenant called her daughter, D.E. as a witness. D.E. testified that she too

had seen a suspicious red vehicle in the parking lot. She was able to provide a very specific description of a female that was coming and going between the vehicle and the apartment complex, and appeared to be engaging in suspicious activity.

The landlord also sought to end the tenancy based on a breach of a material term of the tenancy agreement. Specifically, at the outset of the tenancy, the tenant signed a Crime Free Housing Addendum. This addendum noted that the tenant, any member of the tenant's household and any person invited onto the property shall not engage in any criminal activity on the premises of the property.

She stated that the actions of the tenant's son were a violation of the Crime Free Housing Addendum and would thus be just cause for a notice to end tenancy.

Analysis – Order of Possession

The landlord sought an Order of Possession pursuant to section 46 of the *Act*. Specifically, the landlord argued that *a person permitted on the property by the tenant has put the landlord's property at significant risk and for a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Much testimony was provided by the landlord that the tenant's son is engaging in alleged illegal activity in the parking lot of the rental complex. Despite the detailed description of events and witness statements, little evidence was produced at the hearing demonstrating how these supposed actions **put the landlord's property at significant risk**. I found the landlord to be a very credible witness and have no doubts about what she and her witnesses reported; however, she failed to establish that any of the actions taken by the tenant's son placed the landlord's property at significant risk.

The second reason put forward by the landlord for ending the tenancy concerned a breach of a material term of the tenancy agreement. The landlord argued that the actions of the tenant's son were illegal and ran counter to the Crime Free Housing Addendum that the tenant had signed at the outset of the tenancy. While, I am aware that it is highly possible that the tenant's son is engaging in illegal activity, mere suspicion of illegal activity is not adequate reason for ending a tenancy. If these persons are not welcome on the premises and are engaging in suspected illegal activity, the landlord can contact the police and have them removed for trespassing. Furthermore, for the tenant to be in breach of a material term of the tenancy, they must not have corrected the issue within a reasonable time after written notice was given to

do so. During the course of the hearing the tenant stated that she has not seen her son's girlfriend for "9 weeks or so" and the landlord acknowledged that the activities of the tenant's son have not been such an issue since the 1 Month Notice was issued.

For the reasons above, I am dismissing the landlord's application to end the tenancy for cause. The landlord has failed to demonstrate how the person permitted on the property by the tenant has put the landlord's property at significant risk and how a breach of a material term of the tenancy was not corrected within a reasonable time after written notice to do so.

The tenant should be cautioned to ensure that anyone she permits to be on the property, behave in a manner that would not jeopardize her tenancy in the future.

As the tenant was successful in cancelling the landlord's 1 Month Notice to End Tenancy, the tenant may pursuant to section 72 of the *Act*, withhold \$100.00 from a future month's rent.

Conclusion

The tenant's was successful in cancelling the landlord's 1 Month Notice to End Tenancy. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future month's rent.

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: March 23, 2017

Residential Tenancy Branch