



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for January 4, 2017. I had allowed the tenant's adjournment application as the tenant was in the hospital and was unable to attend.

The adjournment decision dated January 10, 2017 noted the requirements for service of the hearing package and evidence. The landlord acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenant also acknowledged receipt of the landlord's evidence for this hearing, and was ready to proceed.

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, and an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62. Both parties 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 gave undisputed sworn testimony that the 1 Month Notice, with an effective date of December 17, 2016 was personally served to the tenant on November 17, 2016. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

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 an order for the landlord to comply with the *Act*, regulation, or tenancy agreement?

Background and Evidence

This tenancy began on March 1, 2012 with monthly rent currently set at \$756.00 per month, payable on the first of each month. The landlord currently holds a security

deposit of \$350.00. The landlord lives on the main floor, while the tenant resides in the basement rental suite.

The landlord submitted the notice to end tenancy providing three grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
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; and
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 had put her property at risk, and continues to do so, as the tenant requires full time care and supervision. The landlord stated that although the tenant does have a social worker, JW, the social worker does not provide adequate care and support required by the tenant, and in the landlord's opinion is "not accountable".

The landlord provided the following reasons to support her belief that the tenant is a risk to her property. The landlord testified that the tenant has no family or friends within the province. The landlord testified that she has been in communication with the tenant's social worker, JW, and has had concerns for over a year about the tenant's ability to take care of herself. The landlord provided, in her evidence, an email that was sent to JW on January 18, 2016 summarizing the landlord's son's concerns about the tenant's health and her reliance on the landlord's son for assistance. The landlord stated that the social worker's assistance was intermittent despite the fact that the tenant was unable to care for herself.

The landlord testified that in December of 2015 there was an electrical issue due to overloading of electrical cords, which necessitated an electrician having to attend as the incident left the home with no power. The landlord also testified that the tenant was in possession of a firearm and ammunition, despite the fact that the tenant was on painkillers. The landlord had also provided, in her evidence, letters from neighbours who have had to assist the tenant, and who had concerns after finding the tenant lying on the floor in her own waste for hours. The landlord stated that the tenant had listed her as an emergency contact without her consent, and she emphasized that her role was a landlord, and not a caregiver.

The landlord also expressed concern over multiple late and partial rent payments from the tenant as the tenant had paid both November and December rent late, and not in

full. She stated that the tenant's car insurance had expired, and these issues support the landlord's concerns that the tenant did not have the capacity to manage her own daily affairs. The landlord stated that the tenant's condition caused her serious concern as the relationship had become very draining and demanding. The landlord stated that she believed the tenant required assisted living, and although the tenant may seem fine now, she was uncertain what may happen in the future.

The tenant disputed the landlord's testimony, stating that she was capable of taking care of her own needs, and that she disagreed with everything the landlord said in this hearing. She testified that her vehicle was insured, and that her firearm was registered and double locked.

The tenant's social worker, JW, also provided testimony. JW testified that he had been the tenant's social worker for fourteen months, and that although the tenant was a senior who had some medical issues, she was "functionally independent", and he had no concerns. JW stated that the tenant receives regular support, three to four times a week, from a senior's center that includes housekeeping, rides, and assistance with medical appointments and shopping. He testified that the tenant also receives regular follow-ups with a physician, and that she had recovered well from the broken hip that she was hospitalized for in November. He testified that the tenant does not qualify for funding for twenty-four hour assisted living, nor does she require that form of assistance.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

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

(d) the tenant or a person permitted on the residential property by the tenant has...

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed her application on November 23, 2016, six days after receiving the 1 Month Notice. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving she has cause to end the tenancy.

I have considered the concerns brought up by the landlord, as well as the evidence that she provided to support her reasons for ending this tenancy. I have also considered the testimony of the tenant, and of her witness. Although the tenant had suffered medical issues, and although the tenant had requested assistance in the past from the landlord, the landlord's son, and from others, the burden is on the landlord to demonstrate how the tenant has significantly put the landlord's property at risk, interfered or disturbed the landlord or other occupants, or seriously jeopardized the health and safety of the landlord, or other occupants. The tenant disputed the landlord's submissions that she required full-time care, and provided evidence that significantly challenges the landlord's claims.

I accept the testimony provided by the tenant's social worker, which addressed the issues brought up by the landlord. I considered the undisputed facts before me, primarily that the tenant does have support, and that the tenant does suffer from some medical issues. I find that, although the landlord recounted some incidents that have caused her much concern, the landlord did not demonstrate how the tenant had put the landlord's property at significant risk, especially to a degree that is serious enough to warrant terminating this tenancy. The landlord did provide undisputed testimony that there was an incident with the electrical system, but no reports or expert evidence were provided to support how this incident could be attributed to the tenant. I have also considered the fact that this incident occurred in 2015, and has not occurred again, and therefore seems isolated in nature rather than indicative of a pattern of behaviour that justifies significant concern.

The landlord also testified that the tenant had caused her, and her son, much hardship and disruption, by relying on them for assistance. Although the tenant's requests for assistance were above and beyond the role of the landlord, and had caused much disturbance to the landlord and other occupants, I find that ending the tenancy on this

ground would be unjustified considering that the landlord did not provide the tenant with any official warning that her requests would be grounds for ending this tenancy. The tenant indicated in her application that she would not ask for assistance in the future.

The landlord had also indicated that the tenant was late in her rent payments and did not insure her vehicle, and this was indicative of the tenant's inability to manage her daily matters. The landlord did not indicate "repeated late payments" on her 1 Month Notice, although section 47(1)(b) of the *Act* allows the landlord to end the tenancy for this reason. I also find that the landlord did not provide sufficient evidence to support how late payments of rent were indicative of the tenant's inability to function without assistance, and not attributed to other factors like the tenant's recent hospitalization or medical issues. The tenant disputed the landlord's claim that her car was uninsured, and the landlord did not provide sufficient evidence to support this specific claim.

I find that the tenant is elderly and does require some assistance in her daily living. I also find that the tenant had suffered multiple accidents, which unfortunately had caused the landlord, her son, and others concern and much disturbance. I do not, however, find that these incidents, or the tenant's medical conditions, are significant enough to justify ending this tenancy. More specifically, I find the landlord did not provide sufficient evidence to demonstrate how the tenant posed a significant risk to her property. The disturbance caused by the tenant must be unreasonable or significant enough to justify ending this tenancy. I note that the landlord did communicate with the social worker about her concerns about whether the tenant required more assistance, but as stated above, I have concerns whether it was properly communicated to the tenant by the landlord that the tenant's requests for assistance would result in a 1 Month Notice. I accept the social worker's testimony that the tenant does not qualify for twenty-four hour assisted living, and I find that this fact supports the tenant's and social worker's testimony that the tenant is functionally independent, and does not require twenty-four hour care as maintained by the landlord. Lastly, I find that the landlord did not provide sufficient evidence to support how the tenant significantly posed any risk to the health and safety, or lawful right, or the landlord or other occupants.

Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue as per the *Act*.

The tenant indicated in her application that she was requesting an order for the landlord to comply with the act, regulation, and tenancy agreement. As no specific submissions were made regarding this part of the tenant's application, I dismiss this part of the tenant's application.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice of November 16, 2016 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The remainder of the tenant's application is dismissed.

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 3, 2017

Residential Tenancy Branch

