



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MT FF

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

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 confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The landlord testified that the 1 Month Notice, dated April 28, 2017, was served to the tenant by posting to the tenant's door on April 29, 2017. The tenant indicated during the hearing that there was no issue with the service of the 1 Month Notice. Accordingly, I find that the 1 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*.

The tenant filed his application on May 3, 2017, within 10 days of receiving the 1 Month Notice, in accordance with section 47 of the *Act*. Accordingly, the tenant withdrew his application for more time to make his application as he filed his application on time.

Issues 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 recover the filing fee for this application from the landlord?

Background and Evidence

Both parties agreed that there is no written tenancy agreement, but that this month-to-month tenancy began in April 2015, with the current landlord taking over this tenancy in March 2016 after he purchased the home. Rent is currently set at \$308.70 per month, which allows the tenant to occupy one of the seven rented rooms, plus access to a shared kitchen and bathroom with other tenants.

The landlord testified that the tenant had a history of raising issues with the landlord, as well as disturbing other tenants in the home. The landlord referred to a previous hearing held on September 7, 2016 pertaining to this tenancy. At that hearing the Arbitrator dismissed the tenant's application to dispute a rent increase as the rent increase was done in accordance with the *Act*. The tenant was granted \$50.00 as a nominal award for his monetary claim, and the landlord was ordered to make repairs. The remainder of the tenant's application was dismissed.

The landlord issued the 1 Month Notice on the following grounds:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
2. The tenant or a person permitted on the property by the tenant has:
 - i) significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - ii) put the landlord's property at significant risk; or
 - iii) seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord requested an Order of Possession pursuant to the 1 Month Notice issued to the tenant. The landlord testified that on February 28, 2017 the tenant had called the police and municipal office to make false statements about how the landlord was renting the living room as a bedroom. The landlord testified that the tenant had made a further phone call on March 2, 2017 to make the same complaint, which the landlord stated was causing significant interference to him as a landlord.

The landlord further testified that the tenant refused to share the kitchen with other occupants, which was a condition of the tenancy. The landlord also testified that the tenant's cooking produced strong smells, which caused other tenants to move out.

The tenant testified that the landlord caused significant interference to his life by issuing 10 day Notices to End Tenancy for Unpaid rent while he was away on business. He testified that he only cooked using a slow cooker to make congee and soup, and that there were no outstanding issues after the previous hearing was held by the Arbitrator. The tenant disputes that he has caused any disturbances to the landlord, especially enough to end this tenancy on the grounds the landlord provided on his 1 Month Notice.

Analysis

Section 47 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 his application on May 3, 2017, four days after receiving the 1 Month Notice. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

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.*

I have considered the concerns brought up by the landlord, as well as the evidence that he provided to support his reasons for ending this tenancy. I have also considered the

testimony of the tenant. Although the tenant had filed for dispute resolution in the past regarding issues relating to this tenancy, I find the issues raised in the previous hearing do not relate to the issues before me. 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.

I have considered the testimony of both parties, and I find that although the landlord provided undisputed testimony that the tenant had caused concern to the landlord by calling the police and the municipal government office, these actions alone are not sufficient to end a tenancy for cause. The landlord did not provide any witness testimony or reports to support that the tenant's reports to the police or municipal government office were false, or that these phone calls resulted in significant enough disturbance to justify ending this tenancy. I also have concerns as to whether it was properly communicated to the tenant by the landlord that the tenant's behaviour would result in a 1 Month Notice. Although the tenant's behaviour had caused disturbance to the landlord, 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 his phone calls to the police and the municipal government with false information would be grounds for ending this tenancy.

The landlord also testified that the tenant refused to share the kitchen with other occupants, and that his cooking produced strong odours. The tenant disputed these claims. As the burden of proof is on the landlord to support his claims, I find that in the absence of any witness testimony from current or previous tenants, the landlord did not provide sufficient evidence to demonstrate how the tenant's behaviour resulted in a disturbance unreasonable or significant enough to justify ending this tenancy. 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. The landlord also did not provide sufficient evidence to support how the tenant put his property at significant risk.

The landlord also indicated that he wanted to end this tenancy because a "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." A party may end a tenancy for the breach of a material term of the tenancy, but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument

supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe 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...*

In this case, there is no written tenancy agreement for this tenancy. There is also nothing in writing that prohibits the tenant from cooking certain foods, nor has the landlord established how the tenant's behaviour had constituted a breach of a material term of any agreement in place. Furthermore, the landlord has not informed the tenant in writing that there is a problem, and how that problem may be a breach of a material term of the tenancy agreement.

For the reasons outlined above, I find that the landlord has not satisfied me that he had grounds for ending this tenancy on the grounds that were provided on the 1 Month Notice. Accordingly, I allow the tenant's application to cancel the 1 Month Notice, and this tenancy is to continue as per the Act.

As the filing fee is a discretionary award given to a successful party after a full hearing on its merits, I allow the tenant's application to recover the \$100.00 filing fee from the landlord. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

At the beginning of the hearing the tenant withdrew his application for more time to make his application.

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated April 28, 2017, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary award in the tenant's favour in the amount of \$100.00. I allow the tenant to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 26, 2017

Residential Tenancy Branch