Dispute Resolution Services

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* ("*Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated June 21, 2017 ("1 Month Notice"), pursuant to section 47.

The tenant, the tenant's law student advocate and the 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 tenant confirmed that her advocate had authority to speak on her behalf at this hearing. This hearing lasted approximately 57 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution, hearing notice and first written evidence package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application, notice of hearing and first written evidence package and the tenant was duly served with the landlord's written evidence package.

The tenant's advocate confirmed that she served the tenant's second written evidence package late upon the landlord, less than 14 days before this hearing date, contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The evidence consists of the tenant's submissions and arguments regarding the 1 Month Notice, as well as case law and previous RTB decisions. She said that she was told by her supervising lawyer that there was no deadline to submit written evidence prior to the hearing so she relied on this advice. She said that as a law student, she had to have her submissions vetted by her supervising lawyer prior to submission and her

communication with him was “spotty” prior to the hearing due to a “blackout” period for law students from August 18 to September 18, 2017. She claimed that while she read the RTB *Rules of Procedure* prior to the hearing, she believed the 14-day deadline for submission of evidence referred to video or digital evidence, not written evidence.

The landlord claimed that he received the tenant’s second written evidence package within the week before the hearing date, but he could not recall the exact date. I received the evidence at the RTB on September 1, 2017. The landlord said that while he reviewed the evidence, he did not have time to respond to it or to obtain legal counsel in order to obtain assistance. He claimed that one of the cases was from Ontario. He objected to me considering the evidence at the hearing and in my decision.

During the hearing, I notified both parties that I would not consider the tenant’s second written evidence package at this hearing or in my decision. I considered Rule 3.17 of the RTB *Rules of Procedure* and both parties’ verbal submissions before making my decision. I find that the tenant had ample time to submit this evidence on time, given that she filed her application on June 28, 2017 and the hearing occurred on September 5, 2017. I also note that the tenant’s written authorization, allowing her law student advocate to speak on her behalf was signed on August 16, 2017, prior to the “blackout” period for law students and more than 14 days prior to the hearing date, so the second written evidence package could have been submitted at that time which is when the first written evidence package was submitted. I further note that the tenant’s law student advocate read the RTB *Rules of Procedure* prior to the hearing date and specifically knew about Rule 3.14 and the 14-day deadline, so her claims about being told that there was no deadline or that it only applied to specific evidence, when the *Rule* does not even state that, are unfounded. I also find that the landlord did not have an opportunity to prepare for or respond to the evidence, which included a number of previous RTB decisions and case law that he was unfamiliar with. Accordingly, I find that it would be prejudicial to the landlord if I considered this evidence.

The tenant confirmed personal receipt of the landlord’s 1 Month Notice to End Tenancy for Cause, dated June 21, 2017 (“1 Month Notice”), on the same date, the date that the landlord said that it was served upon the tenant. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord’s 1 Month Notice on June 21, 2017.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to add the landlord's first name, since the tenant erroneously indicated his middle name as his first name. During the hearing, the landlord consented to this amendment.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2012 for a fixed term of six months after which it became a month-to-month tenancy. Monthly rent in the current amount of $720.00 is payable on the first day of each month. A security deposit of $340.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit. The rental unit is a shared accommodation with approximately 11 people, one of whom, "S," shares the same bathroom as the tenant.

The landlord issued the 1 Month Notice with an effective date of August 1, 2017, for the following reason:

- *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 landlord said that he has received complaints from the other occupant, S, about the tenant's hygiene in the bathroom at the rental unit, since it is a shared bathroom between the two. He said that he found a note left by S on the tenant's door on January 28, 2017, and took it off before the tenant could see it, because he found it to be too offensive. He provided a copy of the note for the hearing, as well as an additional note which is undated, that he also removed because he said it was offensive. It states that the tenant does not clean up after herself, she left vomit in the bathroom sink, and that S was tired after cleaning up after the tenant. The landlord said that he cleaned the

bathroom sink himself and did not say anything to the tenant. The tenant claimed that she did not see any notes, nor did she speak to S.

The landlord said that he received a complaint from S on March 4, 2017, that there was vomit left by the tenant in the bathroom sink. The landlord claimed that he wanted proof so he went to the rental unit and saw the mess for himself. The tenant said that the landlord often came by without providing notice. The landlord stated that he confronted the tenant, who admitted to causing the mess and cleaned it up. The tenant said that the landlord did not find the vomit in the sink, but in the piping. The landlord denied that, stating that he could not look into the piping. The tenant claimed that she was intoxicated at the time so was not sure whether she caused the mess and only admitted to it in order to avoid confrontation with the landlord. She said that she has an issue with gagging and vomiting while brushing her teeth and that she has changed her brushing schedule from morning to afternoon or evening in order to avoid vomiting. The landlord drafted a letter to the tenant following the incident and provided it to the tenant on March 7, 2017, regarding the above incident.

The landlord testified that around mid-June 2017, he received another angry text message from S, stating that there were feces all over the toilet that was not cleaned up by the tenant. The landlord said that he was nearby at the time so he went in person to check it out and he saw the feces all over the toilet and floor. He claimed that he asked the tenant about it, she admitted to it and cleaned it up. The tenant said that it was not feces but some sushi that she ate and vomited into the toilet but she was not sure because she was intoxicated again at the time.

The landlord said that after the most recent incident, he issued the 1 Month Notice to the tenant. He maintained that he has a legal obligation to provide a clean and hygienic rental unit to all occupants, including S, and that S was the real victim in this situation because the tenant leaving bodily fluids all over the shared bathroom without cleaning up was unhygienic. The landlord said that the tenant cleaned up after the last incident and has been respectable since the 1 Month Notice was issued, with no further reported incidents. The tenant agreed. He explained that because this is a shared bathroom, that if this unhygienic behaviour occurs again in the future, he has to look out for all tenants including S, and he does not want to lose S as a tenant. The tenant said that she has been attending an alcoholic rehabilitation program to assist with her drinking issues and she has changed her brushing schedule in order to avoid vomiting.

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file her application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on June 21, 2017 and filed her application to dispute it on June 28, 2017. Accordingly, I find that the tenant's application was filed within the ten day limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord provided insufficient evidence to show that the tenant seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The other occupant, S, who, according to the landlord, was so disturbed by the tenant's actions as to leave offensive notes posted on the door to the tenant, complained to the landlord repeatedly about the tenant's actions, and was motivated enough to consider moving, did not even show up to the hearing to testify. The landlord said that he asked S to testify but he refused because he did not want to cause "friction" with the tenant, which is contrary to the offensive notes that S left for the tenant, which the landlord felt compelled to remove before the tenant saw them, because he felt they were so offensive. S also failed to provide any written statements for this hearing.

I find that two incidents, one of vomit in the bathroom sink, and one of possible feces in the toilet, do not constitute serious jeopardy to the health, safety or lawful right of another occupant or the landlord. The tenant cleaned up the mess both times. She was unsure whether she even caused the incidents but wanted to avoid confrontation with the landlord so she admitted to them and cleaned up. She did not receive the notes left by S because the landlord removed them so she could not see them; she said that she saw the notes for the first time in the landlord's written evidence package submitted in response to her application. S did not confront the tenant with any complaints, as per the tenant's evidence.

The tenant spoke to the landlord about the two complaints and then rectified the situation by changing her brushing schedule and by cleaning up after herself since. The tenant is also attending a rehabilitation program in order to avoid being under the influence of alcohol, which is why she said she could not remember whether she caused the above incidents. According to the landlord, there have been no further violations or complaints since the 1 Month Notice was issued.

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated June 21, 2017, is cancelled and of no force or

effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed.

The landlord's 1 Month Notice, dated June 21, 2017, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession.

This tenancy continues 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: September 05, 2017

Residential Tenancy Branch