



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lonsdale & First Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, OLC, LRE, OPT, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; to restrict the landlord's access to the rental unit; and for an order of possession.

The hearing was conducted via teleconference and was attended by the tenant; her advocate and two agents for the landlord.

At the outset of the hearing the tenant confirmed that she received the subject Notice to End Tenancy for Cause on July 27, 2017 and that she submitted her Application for Dispute Resolution seeking to cancel the Notice on July 31, 2017 or 4 days after receiving the Notice. Section 47(4) of the *Residential Tenancy Act (Act)* allows a tenant 10 days to submit such an Application and as such, I find the tenant submitted her Application within the allowed 10 Days and does not require additional time to submit her Application. I amend her Application to exclude the issue of more time.

Also at the start of the hearing, I clarified with the tenant that she is still living in and has possession of the rental unit. As such, the tenant does not need an order of possession because she has possession. Therefore, I also amend the tenant's Application to exclude her claim for an order of possession.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim for an order to suspend or set conditions on the landlord's right to enter the rental unit. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's claim to restrict the landlord's access is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which

establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's claim for restricted access. I grant the tenant leave to re-apply for this other claim.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The parties agreed the tenancy began in 2002 and is currently a month to month tenancy for a monthly rent of \$889.00 due on the 1st of each month.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on July 27, 2017 with an effective vacancy date of August 31, 2017 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and put the landlord's property at significant risk.

The landlord submitted that on June 25, 2017 the tenant gained access to a vacant rental unit on the residential property (unit #10) and used the washing machine causing a flood in a rental unit below the vacant unit (unit #5). The landlord testified that while the unit was vacant they were completing some repairs to it which required the washing machine drain to be disconnected so when the tenant used the washing machine the drainage caused the flood.

The landlord confirmed that the flooding had been cleaned up by the tenant and the occupant of the unit #5 and no damage resulted that required any repairs or costs.

In support of their assertion that the tenant was the person who used the washing machine the landlords have submitted 2 letters – one from the previous occupant of the unit where the washing machine is located and one from another of their agents.

The letter from the previous occupant is dated September 15, 2017 and states, in part:

“I can confirm that at no time did my wife or I give permission to allow SH to enter the suite for any reason after we moved out June 15, 2017. I confirm that the only times she was in the suite was when invited and at no time did we provide her with access when we were not home or when the door was locked.

I had hidden a set of keys in the building for emergency personnel in the event that I was not home. I believe this is how Ms. H must have gained access to the locked suite to do her laundry.”

The second letter is undated but recounts, generally the writer's observations when he arrived at the residential property and he states, in part:

“I arrived at the building at approximately 9:15 pm and observed no City Fire trucks outside. When I entered suite #5 I encountered a group of people apologizing for the inconvenience. (Not knowing I would be coming to the building) They told me that one of the assembled group was from another suite in the building. (S, from #8) She apparently had decided to do her washing in the vacant suite that for some reason she had keys for, not knowing that the washing machine was not connected which caused the flood.”

The landlord testified that the reason they had waited to issue the notice almost an entire month after the event had occurred was that she wanted to confirm details with the occupant of unit #5. The landlord submitted that the unit #5 occupant confirmed that it was the tenant who had been using the washing machine in the unit above her. However, the occupant would not put anything in writing to confirm this as she did not want to impact her relationship with the tenant.

The tenant submitted that she had not done her laundry in unit #10 but that she did gain access to unit #10, because she knew where the key was, so that she and the occupant of Unit #5 could stop the flooding and clean up the water before any permanent damage could occur.

The tenant submitted that several occupants of the residential property knew where the previous occupant had stored the key to his unit on the top of a cabinet outside of the unit. She stated that she knew where it was because she would often take care of the previous occupants' pets when they were away. The tenant submitted that it could have been any of the other occupants who knew where the key was kept.

Analysis

Section 47 of the *Act* states 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;

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, the tenant submits that she was not the person who did laundry in the vacant rental unit but rather she only used the key to help the occupant of unit #5 to stop the flooding and clean up to prevent damage to the property.

From the landlord's submissions, I find the landlord has failed to provide any written statements or testimony from anyone who has direct knowledge of who actually entered the vacant unit to start the laundry and cause the flooding. I am not satisfied that the landlord has provided sufficient evidence to establish, on a balance of probabilities, that the tenant used the washing machine and caused the flooding.

Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 27, 2017 and the tenancy remains in full force and effect.

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: October 19, 2017

Residential Tenancy Branch