Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") and a One Month Notice to End Tenancy for Cause (the "One Month Notice").

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the agents for the Landlord (the "Agents"), all of whom provided affirmed testimony. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

During the hearing it became apparent that since the 10 Day Notice and the One Month Notice were served on the Tenant, the property had been sold. Three parties were therefore present during the hearing on behalf of the Landlord; the previous owner and Landlord, R.B., who is now employed as an agent for the new owner; the respondent, V.M., who is also employed as an agent for the new owner; and B.S., an employee of the property management company hired by the new owner. For the sake of clarity, the above noted parties shall be referred to collectively as the "Agents".

Adjournment Request

At the outset of the hearing the Tenant stated that they submitted their evidence to the Residential Tenancy Branch (the "Branch") and the respondent late and requested an adjournment so that the evidence could be properly received and considered. The Tenant testified that they were unable to submit their evidence earlier as they had been in the hospital for several hours on October 7, 2017, due to an accident with a motor vehicle while riding their bicycle. The Tenant testified that they had also been incapacitated for almost a week thereafter.

Section 7.8 of the Rules of Procedure states that at any time after the dispute resolution hearing begins, a party or a party's agent may request that a hearing be adjourned and that the arbitrator will determine whether the circumstances warrant the adjournment of the hearing. Section 7.9 outlines what an arbitrator may consider in determining whether an adjournment is warranted, including the oral or written submissions of the parties, the likelihood of the adjournment resulting in a resolution, the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment, whether the adjournment is required to provide a fair opportunity for a party to be heard, and the possible prejudice to each party.

In the hearing I considered the Tenant's request, in conjunction with section 7 of the Rules of Procedure, and the request for an adjournment was denied for the following reasons. Rule 2.5 of the Rules of Procedure states that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing. As a result, I find that the Tenant should have submitted copies the documentary and digital evidence to be relied on at the hearing at the time they filed their Application.

In any event, I find that the Tenant had sufficient time to submit their evidence prior to their accident as the Notice of Hearing package, which contains information regarding the date and time of the hearing, was ready for pick-up September 8, 2017; six and a half weeks prior to the hearing and almost one month prior to the Tenant's accident. Although the Tenant testified that they were hospitalized for approximately four hours on October 7, 2017, and incapacitated for approximately the next week, no documentary evidence of this incapacitation was before me for consideration and no efforts were made by or on behalf of the Tenant to seek an adjournment prior to the start of the hearing. As a result, I find that the Tenant not only had sufficient time to submit

evidence in accordance with the Rules of Procedure, but that their the need for an adjournment after the commencement of the hearing was at least in part due to their intentional actions or neglect. Further to this, I find that an adjournment would result in significant prejudice to the Landlord, as the Application relates in part to a 10 Day Notice for Unpaid Rent or Utilities. As a result, the hearing proceeded as scheduled.

Late Evidence

Having denied the Tenant`s request for an adjournment, I will now turn to the issue of their late evidence. The Agents testified that although they had received the Tenant`s evidence, it had only been received at 10:50 am, just over two and a half hours prior to the hearing. As a result, they stated that they did not have time to consider or respond to it. Although the Tenant stated that they had submitted their evidence to the Branch, I did not have it before me for consideration. Section 3 of the Rules of Procedure states that documentary and digital evidence that is intended to be relied on at the hearing must be served and submitted as soon as reasonably possible, and in any event, must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. Section 3 of the Rules of Procedure also states that if the arbitrator determines that a party unreasonably delayed the service of evidence, or the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice, the arbitrator may refuse to consider the evidence.

By the Tenant`s own admission they did not serve their evidence in accordance with the Rules of Procedure. Further to this, the evidence was not received by the respondent with sufficient time for them to consider or respond to it. The evidence was also not before me for consideration. As a result, I found that it would be a breach of the principles of natural justice to accept the Tenants late documentary evidence for consideration and it was therefore excluded from hearing. However, the Tenant was advised that I would still accept sworn testimony in the hearing regarding documents, should they wish to provide it.

Issue(s) to be Decided

Is there a valid reason to cancel the 10 Day Notice under the Act?

Is there a valid reason to cancel the One Month Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel either the 10 Day Notice or the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the Act?

Background and Evidence

There are two Notices to End Tenancy which are the subject of this dispute. The first is a One Month Notice to End Tenancy for Cause (the "One Month Notice") dated August 28, 2017. The One Month Notice has an effective vacancy date of September 30, 2017, and indicates the following reasons for ending the tenancy:

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The Agent testified that the tenant has put the Landlord's property at significant risk by leaving her keys in the outside lock of her apartment door on several occasions which poses a risk to other tenants as anyone could take the keys and have access to the building. The Agent stated that the Tenant has been given several letters with regards to the security issue posed by leaving her keys in the door, copies of which were submitted for my consideration. I asked the Agent if the front door to the building required a separate key, and the Agent stated that it did. In support of their testimony the Agents also submitted two photographs of keys in the lock of a door and one letter signed by two other occupants of the building confirming that they have seen keys left in the door of the Tenant's rental unit.

The Tenant testified that she has on occasion forgotten her keys in the lock to her apartment door but denied that it was a significant security issue as the only people who could access them are people who already had access to the building. The Tenant stated that prior to the Landlord's filing for dispute, there had never been any complaints regarding this issue from other occupants of the building and that that there have been

other significant security issues in the building which the Landlord has never taken issue with or acted upon.

The Agent testified that the Tenant has also left her bike in the hallway approximately 8-10 times in the last 8 months which poses a safety risk with regards to safe passage in the hallway. The Tenant admitted that they have from time to time left their bike in the hallway as they have already had one bike and one scooter stolen from the bike rack outside. The Tenant stated that the bike has usually only been there for a short time, and that now she takes it into her apartment. The Tenant also stated that she has spoken to an elderly neighbour who uses a walker and they advised her that the bike was not an issue for them.

In support of their belief that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord, the Agents testified that the Tenant caused an incident in the laundry room and provided a letter from another occupant of the building regarding a late-night incident in early 2017. The Agents also provided testimony that the Tenant failed to comply with a notice to enter her unit and that she failed to provide the Agents and Landlord with information relating to her storage unit when requested.

The Tenant provided testimony that another occupant of the building, along with one of the Agents, was actually at fault for the laundry room incident and denied that entry to her unit was expressly denied. Instead, the Tenant testified that one of the Agents had threatened her when completing repairs in her unit, and that as a result, she requested that this particular Agent not be the one to enter the unit. The Tenant also stated that although they did not provide the Landlord with their exact storage unit number in writing as requested, she advised one of the Agents in person of the location of the storage units she was using.

The second Notice to End Tenancy is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated September 4, 2017, which has an effective vacancy date of September 17, 2017, and indicates that as of September 1, 2017, the Tenant owed $635.00 in rent. The 10 Day Notice also states that it was served on the Tenant on September 4, 2017, by being posted to the door of the Tenant's rental unit. The Tenant acknowledged receipt of the 10 Day Notice on September 5, 2017. All parties also agreed that at the time that the 10 Day Notice was issued, the Tenant owed $635.00 in rent, and that the full balance owed, as shown on the 10 Day Notice, was paid by the Tenant on September 6, 2017.

Analysis

Ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove they had sufficient cause under the Act to issue the notice. Having carefully reviewed the evidence before me from both parties, I find that the Agents have failed to establish, on a balance of probabilities, that the Landlord had cause to end the tenancy under sections 46 and 47 of the Act.

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

> **Landlord's notice: non-payment of rent**
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> **46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

> **46** (4) Within 5 days after receiving a notice under this section, the tenant may
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> (a) pay the overdue rent, in which case the notice has no effect, or
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> (b) dispute the notice by making an application for dispute resolution.

Based on the evidence and testimony before me, I am satisfied that the Tenant paid the overdue rent within five days after receiving the 10 Day Notice and therefore, pursuant to section 46(4)(a) of the *Act*, the 10 Day Notice dated September 4, 2017, is cancelled and of no force or effect.

Policy Guideline 32 defines illegal activity as activity that is a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It states that the party alleging the illegal activity bears the burden of proof and should be prepared to establish the illegality by providing a legible copy of the relevant statute or bylaw. Further to this, Policy Guideline 32 states that in considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration will be given to such matters as the extent of interference with the quiet enjoyment of

other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

Although all parties agreed that on two occasions the Tenant utilised a power outlet in the hallway by way of an extension cord, the Agents did not submit a legible copy of a relevant statute or bylaw to establish that this activity is illegal and acknowledged that the police were not called and that no charges were laid. Based on the above, and in consideration of Policy Guideline 32, I find that the Agents have therefore failed to establish that the activity engaged in by the Tenant was illegal.

In the hearing the parties agreed that on a number of occasions over the past year the Tenant has left her keys in the lock of their apartment door. While I can agree that this poses at least some risk to the Landlord’s property, I do not find this risk significant, given the frequency and duration of the occurrences and the fact that the building is locked from the outside. As a result, I am not satisfied by that the Tenant or a person permitted on the residential property by the Tenant has put the Landlord's property at significant risk.

I also recognize that on a number of occasions over the past year the Tenant has left her bicycle in the hallway. Although the Agents have argued that this poses a health and safety issue with regards to the safe passage of other occupants, the only documentary evidence submitted in support of this argument were several photos of a bicycle in a hallway and a letter from two other occupants of the building acknowledging that they have seen the Tenant’s bicycle in the hall. I find this evidence insufficient to establish that a safety issue exists with regards to safe passage in the hallway or that any such risk, should it exist, is sufficiently serious to justify ending the tenancy.

Finally, I find that the Landlord has also failed to establish that the Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property. Both parties appear to have been at fault to some degree for the incident in the laundry room and the only other complaint letter from another occupant regarding a disturbance from the Tenant references an incident from early 2017. I also find that the Agents have failed to establish that the Tenant failed to comply with a notice to enter her unit, or that her failure to provide the Agents and Landlord with the information relating to her storage unit constitutes a sufficient reason to end the tenancy.

Conclusion

I order that the 10 Day Notice dated September 4, 2017, and the One Month Notice dated August 28, 2017, be cancelled. I also order that the tenancy continue in full force and effect 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: November 2, 2017

Residential Tenancy Branch