



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 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 Tenant’s advocate (the “Advocate”) and the agent for the Landlord (the “Agent”); all of whom provided affirmed testimony. The parties were provided 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. At the request of the Tenant, a copy of the decision will be mailed to the Tenant at the dispute address and e-mailed to the Advocate at the e-mail address provided in the hearing. At the request of the Agent, a copy of the decision and any Order of Possession issued in favor of the Landlord will be e-mailed to her at the e-mail address provided in the hearing.

Preliminary Matters

The tenancy agreement in the documentary evidence lists a different Landlord than the Landlord listed as the Respondent in the Application. In the hearing the Agent testified that approximately one year ago she took over management of the building on behalf of the Respondent, who is the Landlord. As no objections were raised and the Applicant clearly listed the Respondent as the Landlord, I am satisfied that the Respondent is the Landlord.

Both parties also raised concerns about evidence. The Agent testified that she had submitted 36 pages of evidence, of which only 22 were before me for consideration. As the Tenant acknowledged receipt of the full 36 pages from the Landlord, and in the absence of an objection

from the Tenant or the Advocate, I advised the Agent to re-submit the complete 36 page package (the "package") to the Residential Tenancy Branch (the "Branch") for my consideration by 4:30 P.M. on the date of the hearing. I advised the Agent that if the package was not submitted in accordance with the timeline noted above, I would render my decision based on the documentary evidence and testimony before me in the hearing. As the package was received by the Branch within the timeline noted above, I accepted it for consideration in rendering my decision.

The Tenant and the Advocate also requested permission to submit new and relevant evidence. The Tenant and the Advocate testified that the Tenant's unit has been cleaned and was inspected on Monday December 11, 2017, and found to be in satisfactory condition at that time. The Agent confirmed that the Tenant's rental unit was inspected on Monday December 11, 2017, two days prior to the hearing, and that it is currently in an acceptable state of cleanliness and repair. The Tenant and the Advocate stated that as the unit was only recently fully cleaned, they could not submit the photographs at least 14 days prior to the hearing as required in the Rules of Procedure. Instead, the Tenant and the Advocate requested permission to submit them as new and relevant evidence in the hearing. As the parties agreed that the state of the Tenant's rental unit is currently acceptable, I find that this late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Pursuant to section 3.17 of the Rules of Procedure and with the consent of the Agent, I therefore allowed the Tenant and the Advocate to submit the late photographic evidence for my consideration. I advised the Tenant and the Advocate that if the pictures were not submitted in accordance with the timeline noted above, I would render my decision based on the documentary evidence and testimony before me in the hearing. As the pictures were received by the Branch within the timeline noted above, I accepted them for consideration in rendering my decision.

Issue(s) to be Decided

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

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

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the month to month tenancy began July 1, 2013, at a monthly rent of \$540.00. In the hearing the parties agreed that rent is currently \$575.00 and due on the first day of each month.

The Agent testified that the Tenant breached section 17 of the tenancy agreement, which states that the Tenant must maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit and the residential property to which the tenant has access. The Agent stated that this is a material term of the tenancy agreement because failure to maintain reasonable health, cleanliness, and sanitary standards affects the Landlord's property, the health of the Tenant, and the health and quiet enjoyment of other occupants of the building. The Agent testified that the Tenant was served a breach letter on January 19, 2016, which advised her that failure to maintain reasonable health, cleanliness, and sanitary standards was a breach of her tenancy agreement and that if the situation was not rectified within seven days, a Notice to End tenancy would be served.

The Agent testified that the Tenant did not rectify the situation and therefore a One Month Notice to End Tenancy for Cause (the "One Month Notice") was served on the Tenant by affixing a copy to the door of the Tenant's rental unit on September 25, 2017. In the hearing and on her Application, the Tenant acknowledged receiving the One Month Notice posted to her door on September 25, 2017.

The One Month Notice in the documentary evidence before me, dated September 25, 2017, has an effective vacancy date of October 31, 2017, and states that the reason for ending the tenancy is because the Tenant has breached a material term of the tenancy agreement and has not corrected the breach within a reasonable amount of time after being given written notice to do so.

The Agent submitted testimony and documentary evidence indicating that the Tenant's rental unit contained significant amounts of garbage, recycling and human waste materials, and that the state of the apartment was so severe that the smell was impacting other occupants of the building. The Agent also provided evidence and testimony that it was difficult to enter the Tenant's rental unit for both physical and sanitary reasons and that trades people attempting to address a bed-bug issue and repair a broken fire alarm were prevented from entering the unit as a result.

The Tenant and Advocate acknowledged that the state of the Tenant's rental unit was unacceptable at the time the One Month Notice was served and that the photographs submitted by the Agent were accurate. However, all parties agreed that the Tenant's rental unit is currently clean. The Tenant and the Agent stated that the Tenant is a person with disabilities and was having difficulty keeping the rental unit clean due to her disabilities. The Tenant and Agent also testified that the tenant has obtained the community resources she needs to keep the rental unit in an acceptable state of cleanliness and repair, such as a mental health worker, a cleaning lady, and a support worker from a senior's service society. As a result, the Tenant and the Advocate argued that the issue has been resolved and will not reoccur.

Analysis

Section 47 of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The Agent provided testimony and documentary evidence to establish that the tenancy agreement contains a term requiring the Tenant to maintain reasonable health, cleanliness, and sanitary standards. The parties agreed that the Tenant's rental unit was not in compliance with this term of the tenancy agreement and the Agent provided testimony and documentary evidence to establish that the Tenant was given a letter advising her of the breach, giving her a timeline to correct the breach, and advising her of the consequences of failing to comply with this term in the tenancy agreement. The Agent also argued that section 17 of the tenancy agreement is a material term for which a breach will constitute the end of the tenancy.

Policy Guideline #8 states that 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. It also states that to determine the materiality of a term during a dispute resolution hearing, the Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term is a material term.

Although the Agent testified that section 17 is a material term of the tenancy agreement because failure to maintain reasonable health, cleanliness, and sanitary standards affects the Landlord's property, the health of the Tenant, and the health and quiet enjoyment of other occupants of the building, the Agent's own evidence establishes that this issue has been occurring for several years and that the Agent and/or the Landlord took more than a year and a half to take action on the Tenant's failure to abide by the terms of the breach letter dated January 19, 2016. Based on the foregoing, I find that the Agent has failed to establish, on a balance of probabilities, that section 17 of the tenancy agreement is a material term of the tenancy agreement for which even a trivial breach will constitute the end of the tenancy. Further to this, it appears that the breach of the tenancy agreement has already been rectified by the Tenant. As a result, I find that the Agent has failed to establish a cause under Section 47 of the *Act* to end the tenancy and I order that the One Month Notice dated September 25, 2017, is cancelled and of no force or effect.

While the Agent provided testimony and documentary evidence in the hearing that the Tenant's breach of section 17 of the tenancy agreement has unreasonably disturbed other occupants of the building, and seriously jeopardized the health, safety, and lawful right of other occupants and the Landlord, these were not stated grounds for ending the tenancy on the One Month Notice dated September 25, 2017. As a result, I did not consider them in rendering my decision

in relation to this matter. However, in the view of preventing future disputes in relation to this issue, the Tenant should be aware that section 47 of the *Act* does allow a landlord to end a tenancy by serving a notice to end tenancy if 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, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

Conclusion

I order that the One Month Notice dated September 25, 2017, is cancelled. As a result, I 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: December 15, 2017

Residential Tenancy Branch