



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and an Order for the Landlord to comply with the Act, regulation, or tenancy agreement with regards to repairs and the restriction of guests.

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 agent for the Landlord (the “Agent”), the Tenant, and the Tenant’s assistant (the “Assistant”), all of who 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. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing, the Agent identified that the owner of the property is a corporation and that the rental unit is located in a subsidized housing building. The Agent provided me with the name of the corporation which owns the property and stated that the respondent is actually an agent for the owner. The Application was therefore amended in accordance with the *Act* and the Rules of Procedure to reflect that the respondent is acting on behalf of the owner.

Preliminary Matter #2

The Tenant and the Assistant attended the conference call via a wifi supported voice communication application and had connectivity difficulties throughout the hearing. On numerous occasions their connection to the conference call was abruptly ended and they exited the conference call without notice. On each occasion I halted the proceedings and the Agent and I waited on the line for them to reconnect. Before continuing with the proceeding, I confirmed the last dialogue that the Tenant and Assistant had heard, and reiterated anything inadvertently said between the time they disconnected and the time I became aware of the disconnection.

Preliminary Matter #3

In his Application, the Tenant sought multiple remedies under multiple sections of the *Act* which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end and I find that the other claim by the Tenant is not sufficiently related to the continuation of the tenancy. As a result, I exercise my discretion to dismiss the Tenant's claim for an order for the Landlord to comply with the *Act*, regulation or tenancy agreement with leave to re-apply.

Preliminary Matter #4

Although the Tenant applied to cancel a One Month Notice, neither party submitted a copy for my consideration. As a result, I accepted testimony from the parties in the hearing regarding the form and content of the One Month Notice and requested that the parties each submit a copy to the Residential Tenancy Branch (the "Branch") for my consideration no later than 4:30 P.M. PST on the date of the hearing.

Both parties complied with this instruction and submitted a copy of the One Month Notice, which I have accepted for consideration in this matter.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that the three-month fixed-term tenancy began in October of 2014, and transitioned to a month-to-month tenancy thereafter. The parties also agreed that the Tenant resides in subsidized housing and that rent in the amount of \$375.00 is due on the first day of each month.

The Agent testified that a One Month Notice was posted to the Tenant's door on February 23, 2018, and the Tenant acknowledged receipt three days later, on February 26, 2018. The One month Notice in the documentary evidence before me, dated February 23, 2018, has an effective vacancy date of March 31, 2018, and lists the following grounds for ending the tenancy:

- The Tenant has allowed an unreasonable number of occupants in the rental unit;
- 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; and
- The Tenant or a person permitted on the residential property by the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The Agent testified that the Tenant's rent subsidy is based on single occupation of the rental unit and that as a result, no more than one tenant or occupant may reside in the rental unit. No documentary evidence was submitted in support of this testimony and the Tenant testified that there is no such requirement in his tenancy agreement. The Agent testified that the Tenant has allowed numerous occupants to frequently reside in his rental unit and that video footage and fob usage records support that the Tenant is not residing in the rental unit alone; however, no video evidence or fob usage records were submitted for my consideration. The Tenant denied that other occupants reside in

his rental unit but acknowledged that he does have guests stay over sometimes, all of whom are there on a temporarily basis and have their own accommodation.

The Agent testified that they have received many complaints from other occupants of the building regarding the guests and occupants of the Tenant's rental unit and the disturbances caused by their constant coming and going from the rental unit. Further to this, the Agent testified that complaints have been received by other occupants regarding their safety and security and that she was threatened herself by an occupant of the Tenant's rental. The Agent stated that this has been brought to the Tenant's attention without resolution. No documentary evidence was submitted in support of this testimony and no witnesses were called.

The Tenant denied that he or any persons permitted onto the property or into his rental unit have disturbed or threatened the Landlord, the Agent, or any other occupants of the building and denied having ever been advised of such behaviour. The Assistant for the Tenant testified that he is the person the Agent is referring to and that he in no way threatened her. Further to this, he stated that the Agent had other people present with her during their interaction and alleged that the reason no witness testimony has been provided for my consideration in support of the Agent's testimony is because he did not threaten her.

Analysis

The 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. In the hearing the parties provided equally compelling and opposing affirmed testimony and while the Agent for the Landlord referenced materials such as video evidence, complaint letters, and fob records which could have supported her testimony, neither the Agent nor the Landlord submitted any documentary evidence for my consideration and no witnesses were called. As a result, I find that the Agent has failed to establish, on a balance of probabilities, that the Landlord had cause to end the tenancy under section 47 of the *Act*.

Based on the above, I order that the One Month Notice dated February 23, 2018, is cancelled and of no force or effect. As a result, I order that the tenancy continue until it is ended in accordance with the *Act*.

Conclusion

I order that the One Month Notice dated February 23, 2018, is cancelled and 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: May 24, 2018

Residential Tenancy Branch