



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, MNSD, OLC, PSF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 19, 2018 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated February 7, 2018. The Tenant also sought reimbursement for the filing fee.

Both parties appeared at the hearing. I explained the hearing process to the parties and neither had questions about the proceedings when asked.

A witness appeared at the hearing for the Landlord. The Landlord and Witness were in the same room. I asked the Witness to leave the room until required. The Landlord said the Witness did leave the room. The Landlord had the Witness come back into the room when it was his turn to testify.

The Tenant had filed an amendment to the Application on April 13, 2018 (the "Amendment"). The Amendment changed the monetary claim to \$6,550.00. The Amendment included a request for monetary compensation for loss of peaceful enjoyment, lack of PVR and insufficient internet which required the Tenant to set up her own connection. During the hearing, the Tenant also mentioned an issue with rent increases although this was not in the Application or Amendment.

Rule 2.3 of the Rules of Procedure (the "Rules") states that claims made in an application must be related. The claims in the Amendment are not related to the claims in the Application. I told the Tenant at the outset of the hearing that I would deal with the claims made in the Application and sever the claims made in the Amendment based on rule 2.3. The Tenant did not take issue with this. Pursuant to rule 2.3, I dismiss the claims made in the Amendment with leave to re-apply. This does not extend any time limits under the *Residential Tenancy Act* (the "Act").

I addressed service of the hearing package and evidence. The Tenant confirmed she received the Landlord's evidence and had a chance to review it prior to the hearing. The Landlord confirmed he received the hearing package in February. The Landlord confirmed he received the Tenant's evidence except for videos submitted. I understood the Landlord to say he received a USB but could not access the files on it. I understood the Tenant to say she left the USB with the Landlord with a note to contact her if he could not access the files.

Rule 3.10.5 of the Rules states that "[b]efore the hearing, a party providing digital evidence to other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence". I was not satisfied the Tenant complied with this rule. Based on this, and because the Landlord was not able to view the videos prior to the hearing, I excluded the videos. The Tenant did not take issue with this and said the videos relate to the Amendment. I will not refer to the videos in my decision.

The Tenant, Landlord and Witness provided affirmed testimony. I have reviewed the admissible evidence submitted by both parties and have considered all oral evidence provided. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The Landlord submitted the current tenancy agreement and a previous tenancy agreement. The Landlord and Tenant agreed on the following. The start date of the current tenancy was March 1, 2016. The tenancy was for a fixed term ending February 28, 2018. The agreement had a vacate clause; however, the tenancy became a month-to-month tenancy after February 28, 2018 because of the legislative changes regarding vacate clauses. Rent was \$820.00 for March and April of 2016 and then increased to \$840.00 per month. It is my understanding from the evidence submitted that there has been further rent increases; however, I did not obtain the details of this from the parties. Both parties agreed rent is due on the first of each month.

Both parties submitted a copy of a One Month Notice to End Tenancy for Cause (the "Notices"). The Notices are identical except for a note in the service section. The Landlord said only one of the Notices was served on the Tenant. Neither party knew which of the Notices was served on the Tenant. The Landlord said he taped both pages

of one of the Notices to the front door of the rental unit on February 7, 2018. The Tenant said she believed she received the One Month Notice to End Tenancy for Cause on February 7, 2018 and agreed it was taped to her door.

I note the following from a review of the Notices. Both are on the approved form. Both are addressed to the Tenant and refer to the rental unit. Both indicate an effective date of March 31, 2018. Both are signed by the Landlord and dated February 7, 2018. Both set out two reasons for the notice. First, that the 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 and put the landlord's property at significant risk. Second, the Tenant has breached a material term of the tenancy agreement and the breach was not corrected within a reasonable time after written notice to correct it was provided.

The Tenant said she filed the Application and paid the filing fee February 19, 2018 and the records of the Residential Tenancy Branch confirm this.

In relation to the reasons for the Notices, the Landlord said he inspected the rental unit in December, January and February. He said the Tenant was sent letters after the first and second inspection regarding issues that needed to be addressed. He testified about these issues. He said there is only one entrance door to the unit. He said the landing by the entrance door was cluttered. He said there were household items on the stairs which is a tripping hazard. He said the landing of the stairwell was obstructed. He said there are two windows in the unit, one in the living room and one in the bedroom. He said both windows were obstructed such that they could not be used as escape routes. He said the electrical panel was obstructed and could not be accessed to shut off breakers if needed in a fire. He said the unit was cluttered which is a fire risk. The Landlord referred to photos from each inspection which were submitted as evidence. He said the Tenant had done nothing between the first and third inspections to remedy the issues raised.

The Landlord provided evidence about further issues including issues related to a space heater, a smoke alarm, garbage outside, items outside and overuse of the entrance way heater. I have not detailed this evidence here as it is not relevant to my decision.

The Tenant submitted letters from the Landlord dated December 4, 2017 and January 8, 2018. The December letter identifies several safety hazards observed during the inspection done the same day. The letter says the hazards need to be remedied by January 4, 2018 and that a follow-up inspection will be done. The letter notes that the

entrance, landing and stairwell is heavily obstructed. The letter states that this is a tripping hazard, limits the ability to exit the suite and prevents emergency personnel from accessing the unit in the event of an emergency. The letter notes the electrical outlets are obstructed which poses a fire risk. The letter notes the heat registers in the living room and bedroom are obstructed which poses a fire risk. The letter notes the bedroom and living room windows are obstructed and should be accessible for the purposes of an emergency exit.

The January letter relates to the inspection done January 6, 2018. The letter identifies safety hazards and states that these must be remedied forthwith. The letter says it is the final warning to remedy the issues. The letter includes the hazards outlined above. The letter states that the issues are to be remedied by January 31, 2018 and that a follow-up inspection will be done.

The Landlord testified that he inspected the unit on February 7, 2018 and issued the One Month Notice to End Tenancy for Cause the same day.

The Tenant was given an opportunity to present evidence and submissions in response to the testimony of the Landlord. The Tenant referred me to written material she had submitted which I will outline below. She agreed there is only one entrance door to the unit. She agreed there is only one window in the bedroom and one window in the living room. In relation to the items in the entry way, the Tenant said she can run up the stairs with groceries in hand without any issues. She said she does not think the entrance is cluttered to the point of being unsafe. The Tenant said emergency personnel could access the unit. She said it would only take five seconds to move the items in front of the electrical panel. She said she moves the items in front of the living room window to clean and that she can do so in two minutes. She said it is not true that she could not escape out her bedroom window. She said she showed the Landlord how fast she could escape from the window and that she can get out the window in 30 seconds if needed. The Tenant said the items in the unit are not clutter. She said she believes the unit is safe. The Tenant did not take issue with the accuracy of the photos. I asked the Tenant if she had done anything between the first inspection and last inspection to remedy the issues identified by the Landlord in his letters and she referred to emptying sinks and the bathtub.

The Tenant testified about the issues related to the space heater, the smoke alarm, garbage outside, items outside and overuse of the entrance way heater. I have not detailed this evidence here as it is not relevant to my decision.

The written material the Tenant referred me to is labelled Part A, Part B and Part C.

Part A appears to relate to the issues regarding garbage outside and items outside which I will not go into given my decision. Part B and Part C are the Tenant's response and objections to the letters sent by the Landlord regarding the inspections done in December and January.

Part B relates to the December inspection and the corresponding letter from the Landlord. I have read the entire document but only provide an example of what it contains here. The Tenant says the Landlord and Witness entered her rental unit. She says they drilled her about not being able to escape from the bedroom window in case of fire. She says she jumped on the bed, had the bedroom window open and was ready to jump within 10 seconds. She says the Landlord told her she needs to move the furniture away from the walls so that he can access the electrical outlets in case of fire. She says she knew this was wrong because nobody in their right mind would want to access electrical outlets in a fire. In relation to the obstructed electrical outlets, she states that "heavily obstructed" is an exaggeration and that she does not remember this rule being in the lease. She refers to the dictionary meaning of "obstructed" and states that the Landlord and Witness did not appear to have any difficulty entering or exiting the unit many times. She states that her position is that "heavily obstructed" means impassable. In relation to the heat registers, she says that "obstructed" is an exaggeration. She states that she does not use the heat registers. In relation to a reference in the letter to items being "piled in front of the bedroom window and the living room window" she states that this is an exaggeration.

Part C relates to the letter dated January 8, 2018 from the Landlord. I have read the entire document but only provide an example of what it contains here. The Tenant says the allegation that the electrical panel and electrical outlets are obstructed is an exaggeration and that the electrical panel has never been obstructed. She says that "[o]ne would think that "heavily obstructed" would mean blocked and impassable". She says the electrical panel is visible and easy to open. She says she has never observed anybody have any issues entering or exiting the unit.

The Witness testified that he had attended the unit with the Landlord during the inspections in January and February. He said moving in the unit was challenging. He said there was clutter on the stairs. He said he had to be careful not to knock into anything when going up the stairs in the unit. He said he could not go up the stairs without turning sideways. He said it was hard to find the light switches in the unit. He said he brought a ladder into the unit to install a smoke detector and found it challenging to get the ladder in without knocking something over or tripping over something. He said setting the ladder up was hard because of cords on the floor and items in the way.

I have reviewed the photos submitted by the Landlord. I note the following from the December photos. The only door to the unit opens to a small landing and then there are stairs up to the main part of the unit. The small landing has a dresser in it that takes up half of the landing. There are items on top of the dresser that are stacked higher than the top of the door. There are items on the side of almost every step of the stairs. There is a clothes rack in the bedroom that runs from one side of the window to the other. It is full of clothes that hang down in front of the window. It is barely possible to see the window in the photos because of the bed and clothes in front of it. There are items stored in the bathtub such that a person could not use the tub without moving the items. There are items between the back of the couch and the window in the living room that appear to take up the entire space between the couch and window. The photos show that the unit is overcrowded with items.

The January photos show much the same thing. The second photo in the package shows the corner of the electrical panel in the entry way. There are items covering most of the electrical panel. There are items including a plant, side table and clothes rack at the top of the stairs in what looks like the kitchen. The bedroom is full of items such that only a small portion of the floor is showing. There are items on the bed. I understand from the Tenant that she put these items on the bed because the Landlord asked her to empty the sinks and bathtub. The bedroom window is barely visible behind the clothes hanging in front of it and items on the bed. Again, the photos show that the unit is overcrowded with items.

The photos from February show the same thing. I do not see any change to the unit. There appears to be a plant, side table, basket, storage bins and clothing rack at the top of the stairs and in the kitchen. The bedroom window is again barely visible behind the clothes. The bathtub is again filled with items such that a person could not use it without moving the items. There continues to be numerous items in front of the living room window. In general, the photos show that the unit is overcrowded with items.

Analysis

In this case the Landlord issued the Notice pursuant to section 47 of the *Act* which allows a landlord to end a tenancy for cause. Pursuant to section 47(4) of the *Act*, the Tenant was entitled to dispute the Notice within 10 days of receiving it and I find based on her evidence, and the definition of “days” in the Rules, that she did so within the time limit.

Section 47(d) of the *Act* allows the tenancy to be ended where “the tenant...has (iii) put the landlord's property at significant risk”.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the reason for the Notice on a balance of probabilities.

I am satisfied on a balance of probabilities that the Tenant has put the Landlord's property at significant risk based on the photos submitted by the Landlord of the state of the rental unit in December, January and February. The Tenant did not take issue with the accuracy of these photos. I find the photos show that the unit is overcrowded with items. Based on the photos, I accept the evidence of the Witness that moving in the unit was challenging for him. Further, I accept the evidence of the Witness that he found it challenging to get a ladder into the unit without knocking something over or tripping over something and that the ladder was difficult to set up because of cords on the floor and items in the way. Based on the photos and evidence of the Witness, I cannot see how emergency personnel could enter the unit with the necessary safety gear and equipment without having problems navigating the items in the entry way, on the stairs and at the top of the stairs if there was a fire. Further, I cannot see how emergency personnel would be able to move around the unit given the number and location of items in the unit. I find this does put the Landlord's property at significant risk as emergency personnel could not effectively deal with a fire in the unit given the overcrowding. Despite the Landlord giving the Tenant warnings about the state of the unit, the unit has not changed appreciably between inspections. In these circumstances, I find the Landlord is entitled to end the tenancy pursuant to section 47(1)(d)(iii) of the *Act*. Given this, I do not find it necessary to deal with the remaining reasons for the Notices.

Based on a review of the Notices, I find both comply with section 52 of the *Act* as required by section 47(3) of the *Act*.

Based on the above, I dismiss the Tenant's Application and uphold the Notices. Pursuant to section 55(1) of the *Act*, I am required to issue an Order of Possession because I have dismissed the Tenant's Application and found the Notices comply with section 52 of the *Act*. Therefore, I grant the Landlord an Order of Possession. The Order of Possession will be effective at 1:00 p.m. on May 31, 2018.

Given the Tenant was not successful in this application, I decline to award her reimbursement for the filing fee.

Conclusion

I dismiss the claims made in the Amendment with leave to re-apply. This does not extend any time limits set out in the *Act*.

Further, I dismiss the Tenant's Application. Pursuant to section 55(1) of the *Act*, I grant the Landlord an Order of Possession. The Order will be effective at 1:00 p.m. on May 31, 2018. The Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 08, 2018

Residential Tenancy Branch