



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, LRE

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package. No issues with service were raised by either party. As both parties have attended and confirmed receipt of the notice of hearing package, I am satisfied that both parties have been sufficiently served.

At the outset it was clarified that the tenant's primary issue in his application was to cancel a notice to end tenancy issued for cause and not the selected issue for end of employment.

At the adjournment the tenant attended the hearing via conference call. The landlord did not attend. An agent, J.M. attended the conference call hearing and both parties confirmed that a new landlord/owner had taken possession of the premises in June

2018. However, neither party has submitted any documentation to reflect this. The hearing proceeded in the absence of the landlord.

During the hearing the tenant withdrew his requests for repairs as he felt confident that a resolution could be reached with the new owners. As such, this portion of the tenant's application is dismissed with leave to reapply.

At the adjournment the tenant attended the hearing via conference call. The landlord did not attend. An agent, J.M. attended the conference call hearing and both parties confirmed that a new landlord/owner had taken possession of the premises in June 2018. However, neither party has submitted any documentation to reflect this. The hearing proceeded in the absence of the landlord.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to an order for the landlord to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to an order for the landlord's right to enter the rental unit to be suspended or conditions set?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2013 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 29, 2013. The monthly rent was \$600.00 payable on the 1st day of each month. A security deposit of \$300.00 was paid. A condition inspection report for the move-in was completed by both parties on August 1, 2013.

The tenant seeks an order cancelling the 1 Month Notice dated January 25, 2018; an order for the landlord to comply with the Act, regulations or tenancy agreement by not vacuuming between the hours of 11pm and 9am and to adjust the landlord's timing/schedule for the primary heating system; an order to suspend or set conditions on the landlord's right to enter the rental premises.

On January 25, 2018, the landlord served the tenant with the 1 Month Notice dated January 25, 2018 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of February 28, 2018 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- the tenant has caused extraordinary damage to the unit.

The details of cause listed on the 1 Month Notice state,

*Tenant has caused significant damage to the rental unit #11
-harassed tenants in the northern section of the building (proof available if
required)*

The landlord clarified that there have been at least 2 loud music complaints made by other tenants. The landlord stated that a loud noise complaint was received in October of 2016 and again in March of 2017. The tenant disputes these claims. The landlord stated that he did not think this was an issue at the time, but that those tenants' had made complaints. The landlord stated this is one of the reasons selected for the 1 Month Notice issued on January 25, 2018.

The landlord also clarified that another tenant, next door has given notice to move out because of this tenant. The tenant disputes this claim. The landlord was unable to provide any details or sufficient proof of this. The landlord also clarified that this was received after the 1 Month Notice was issued.

The landlord claims that the tenant has put the landlord's property at significant risk/caused extraordinary damage to the unit. The tenant disputes this claim. The landlord clarified that the tenant has removed some bathroom floor tiles and ripped off the toilet seat from the toilet. The landlord has submitted in support of this claim photographs showing floor tiles from the bathroom floor sitting in the sink and a toilet seat broken off sitting on the bathtub ledge. The tenant argues that the floor tiles were loose at the beginning of the tenancy and that over time the grout has worn out making

these tiles loose. The tenant claims that the landlord was notified during the move-in inspection and throughout the tenancy. The landlord argued that there are no notations made on the condition inspection report for the move-in. The tenant argued that he did sign the report, but did not notice the lack of notation regarding the floor tiles.

At the adjournment the landlord failed to attend to continue in his submissions for the reasons for cause on the 1 Month Notice to End Tenancy dated January 25, 2017.

The tenant provided details that his neighbor was retained by the landlord to vacuum the common areas of the premises, but that the vacuuming was not occurring at a reasonable time as per the signed tenancy agreement which states that no excessive noise between the hours of 11pm and 9am. The tenant seeks an order for the landlord to comply with this portion of the signed tenancy agreement.

The tenant provided details that the landlord was entering the rental premises without proper notice contrary to the Act.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed evidence of both parties and find that the tenant was properly served with the 1 Month Notice dated January 25, 2017 with the stated reasons for cause. The landlord originally provided preliminary details of his reasons for cause, but upon continuation during the adjournment failed to attend and provide further details. I find on the initial details provided that the landlord has not provided sufficient evidence to support his reasons for cause and in the absence of further submissions, I find that the 1 Month Notice dated January 25, 2018 is set aside and the tenancy shall continue.

In absence of any submissions by the landlord, I find that the tenant's request for the landlord to adhere to its own conditions on not making any excessive noise(s) between the hours of 11 pm and 9 am to be reasonable. As such, the landlord is directed to comply with those same addendum conditions.

On the tenant's request for an order to suspend or set conditions on the landlord's right to enter the rental premises, I note that section 29 of the Act states in part that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission; the landlord provides atleast 24 hours and

not more than 30 days' written notice before entry. The landlord is ordered to comply with the Act.

Conclusion

The tenant's application to cancel the 1 Month Notice dated January 25, 2018 is granted. The tenancy shall continue.

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: June 19, 2018

Residential Tenancy Branch