



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FORTIN HOLDINGS LTD. 100
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, LAT, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant to request a cancellation of a One Month Notice to End Tenancy for Cause. The Tenant also requests an order that the Landlord comply with the Act, regulations and tenancy agreement, an order to change the locks and payment of the \$100.00 filing fee. The Tenant is also requesting compensation for punitive damages of \$5,000.00, although this was not included in his original Application.

The Tenant appeared for the scheduled hearing; two agents for the Landlord were also present, RK and MB. I find that the notice of hearing was properly served and that evidence was submitted by all parties.

The Landlord raised a preliminary objection and stated that the Residential Tenancy Branch had failed to include a copy of their One Month Notice to End Tenancy in his dispute package. The Residential Tenancy Branch received submissions of evidence from the Tenant which the Tenant states he served on the Landlord, and this included two pages of the Notice under dispute. I inquired as to why the Landlord failed to submit his own copy of the One Month Notice for my consideration, or any other documentary evidence, and RK claimed that he believed it was the Residential Tenancy Branch that had a policy of providing the evidence of the notice to him in advance of the hearing. To resolve the matter, I reviewed the photographs of the two-page Notice to End Tenancy filed by the Tenant and then verbally confirmed that it contained the same information as the Landlord’s version, which he had in his possession.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present

affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Tenant entitled to an Order to cancel the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the Residential Tenancy Act ("Act")?

If not, is the Landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

Is the Tenant entitled to an Order requiring the Landlord to comply with the Act, regulations and tenancy agreement, pursuant to section 62 of the Act?

Is the Tenant entitled to an Order to change the locks, pursuant to sections 31 and 70 of the Act?

Is the Tenant entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenancy began September of 2017 as a fixed one-year term, with monthly rent of \$510.00 a month. The building has shared bathrooms and approximately one year ago, several new tenants moved into suites on the 4th floor when the city closed down their former residence. Since that time, the Tenant states that problems have occurred and he has made complaints to the Landlord about the following:

- Obvious drug dealing in common hallways and shared bathrooms;
- Drugs being used by tenants and guests in public or shared areas;
- People sleeping and shooting up drugs in the bathroom;
- Drug paraphernalia found in the bathtub;
- Noise disturbances.

Photographs and other evidence were submitted in support of these allegations, including a witness statement from a resident living next door to the Tenant.

The Tenant states that he went to the manager's office on May 9 to follow up on the complaints and was told that they were investigating the situation before taking action. The Tenant was not satisfied with this, and stated that he may resort to going to the Residential Tenancy Branch to force the Landlord to take action and he asked for the manager's supervisor contact information. At this point, the evidence is in dispute. The Tenant claims that MB became very angry and that he approached the Tenant and tried to slam the office door into him, which almost caught his hand; he says the door opens from the inside and that the glass cracked from the force of the manager slamming it. He submitted photographs of the repaired door to show which way it opens. The manager states that the Tenant was verbally abusive and that as he tried to close the office door, the Tenant held out his hand to prevent the door from closing and/or used his fist to hit the door, cracking the glass in the door.

The Tenant was served with a One Month Notice to End Tenancy for Cause that same day, by posting it on the Tenant's door; the Tenant responded by filing this Application on May 11, 2018. The notice had an effective date of June 30, 2018. The reason stated was that the Tenant seriously jeopardized the health or safety of another occupant or landlord.

The Tenant also states that he wants authorization to change the locks because each time the Landlord requests access for inspections, the door to his rental unit is left unlocked. He addressed this issue with management and it was admitted that the manager, MB, may have forgotten to lock the suite. The Tenant would like to have the only key once the locks are re-keyed. The Landlord, RK, states that he would prefer to have a copy of any key for emergency purposes and that he will personally carry out any future inspections and take responsibility for ensuring that the Tenant's door is locked and secured.

The Tenant states that MB has defamed his character by telling people that he broke the office door and was abusive; he asks for punitive damages of \$5,000.00 in his recent submission. He also asks that the Landlord be ordered to address the serious concerns regarding the occupants in the other three suites identified on the fourth floor, as he is entitled to use his rental unit without such disturbances.

The Landlord states that measures have been taken to investigate these complaints regarding the tenants in three other suites on the fourth floor, where the Tenant resides; MB states that he has received a couple of other verbal complaints about these tenants as well. The Landlord states that one of the suites has since been served an eviction

notice, which is scheduled for a hearing in August. The Landlord argues that they are acting diligently in addressing these complaints.

Analysis

A landlord may serve a one month notice to end a tenancy under section 47 of the Act if a tenant or their guest seriously jeopardizes the health or safety of another occupant or the landlord. The notice must comply with section 52 of the Act in form and in content. The Tenant provided a copy of the One Month Notice to End Tenancy, but the Landlord did not file any evidence for this dispute; the form used was "RTB-2/06", which is an outdated form. However, the form appears to have the required content and a reason for the termination is indicated. I am satisfied that the notice provided is in compliance with the Act. The Tenant filed an application to dispute the notice within the required 10-day limitation period.

The Landlord has the burden of proving the merits of the notice to end the tenancy. In this instance, the notice was served as a result of the single incident in the manager's office and the heated discussion between the parties regarding the serious issues involving other residents on the fourth floor. The Tenant argues that the door swings into the office, and therefore it must be slammed from someone inside to have caused the glass to break. He pointed out that his hands were not injured and therefore the door did not actually strike his hand and cause the damage; the Tenant spoke to his neighbor that day, who has provided a witness statement confirming that there was no visible damage to the Tenant's hands.

I have reviewed the evidence and considered the testimony of both parties and find that there is insufficient evidence, based on a balance of probabilities, to prove that the Tenant put the manager at risk on the date he made the complaint in the office. I find that the testimony and explanation given by the Tenant is credible, and that there is insufficient evidence on the part of the Landlord to prove that this Tenant seriously jeopardized the health and safety of the manager.

Accordingly, I am cancelling the Notice to End Tenancy for Cause dated May 9, 2018 and the tenancy shall continue until terminated with proper notice from either party.

The Tenant asks for punitive damages of \$5,000.00 but this was not included in the original Application; in any event, the Residential Tenancy Branch has no authority to award punitive damages to a party. This request to amend the claim to add punitive damages is denied.

With respect to the issue of keys and access to the Tenant's suite, I find that the Landlord is entitled to enter the property with proper notice and the Tenant may be present to ensure it is secure. It is clear from the evidence that on several occasions the manager has failed to lock the Tenant's suite, which is unacceptable. I am prepared to order that the only keys be given to the Tenant and to RK, who has stated he is prepared to do any future inspections and ensure the door is locked afterwards. This is a reasonable solution which will avoid any further contact between MB and the Tenant, given the recent incident in the office which ultimately led to this dispute.

Finally, the Tenant asks for an order that the Landlord comply with the Act, regulations and tenancy agreement. Under section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit and freedom from unreasonable disturbances; he is also entitled to the use of common areas, free from significant interference.

The Landlord has testified that at least one other unit on the fourth floor has been served with an eviction notice; I find that the Landlord is undertaking to review the complaints and to act on those complaints. However, the photographs and witness statement indicate how serious this issue really is, and that residents may actually be in harm's way from the significant drug use in common areas; this should be apparent to the Landlord based on the evidence submitted.

The Landlord is reminded to act swiftly and to take precautionary measures to ensure the health and safety of law-abiding residents in the building. This may include collecting evidence and reporting to authorities, having security personal on site in the interim and other such measures as deemed necessary. The Landlord is to ensure that the Tenant has freedom from unreasonable disturbances in the future. It is suggested that the Tenant document dates and times of incidents and report these in writing directly to the Landlord, should they continue. The Tenant may also call police to intervene when appropriate and in any emergency.

The Landlord is also reminded to use updated forms as provided by the Residential Tenancy Branch when giving notices, and to submit evidence in advance of future hearings to ensure that it is available to the Arbitrator. This should include any Notice to End Tenancy that the Landlord intends to rely upon in the hearing to evict a tenant. As the Tenant was partially successful in his Application to cancel the Notice, I am awarding \$100.00 for the filing fee; that amount can be deducted from his next month's rent in lieu of direct payment from the Landlord.

Conclusion

The Notice to End Tenancy for Cause is cancelled and of no force or effect; the tenancy shall continue until terminated with proper notice from either party.

The Tenant's claim for punitive damages is dismissed.

The only keys to the rental unit shall be kept by the Tenant and the Landlord, RK, who shall be responsible for on-site inspections and securing the unit after.

The Tenant is awarded the filing fee of \$100.00, which shall be credited against his rent payment.

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: July 09, 2018

Residential Tenancy Branch