



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC AAT 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 to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were received in accordance with section 88 of the *Act*.

The landlord gave undisputed sworn testimony that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice), with an effective date of June 30, 2018 was personally served to the tenant on May 19, 2018. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled an order to allow access to or from the rental unit or site for the tenant or the tenant's guests?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on June 30, 2018, with monthly rent currently set at \$750.00, which is payable on the first day of each month. The landlord collected, and still holds, a security deposit in the amount of \$375.00 for this tenancy.

The landlord issued the 1 Month Notice providing four grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. 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;
3. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified in this hearing that in his rental application, the tenant indicated that his reason for moving was to detach himself from a "streetworker". The landlord testified that both the landlord and other occupants are concerned for the well-being and safety of all occupants in the building as the tenant has allowed this person to enter the building, and at least on one occasion with her own key.

The tenant disputes that this person is a "streetworker", and that testified that he does not have her phone number or means of contacting her. He testified that she would show up unannounced, but he had no way of communicating to her the landlord's wishes for her to remain outside the building.

The tenant also made an application to suspend or set conditions on the landlord's entry to his rental unit as he testified that the landlord has shown up at his unit unannounced and without written notice to do so. The landlord admitted that she had visited his unit on one occasion, but did not enter the tenant's unit. She testified that she had received

a text message from another tenant, and went to visit the tenant to investigate the matter. She testified that she had knocked on the door very hard as the tenant is hard of hearing, but that she had abided by the Act as the practice is to always give at least 24 hours' notice unless in the case of an emergency.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. The landlord served the tenant with the 1 Month Notice on May 19, 2018. The tenant filed for dispute resolution on May 25, 2018. Therefore, the tenant is within the time limit under the Act. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*

- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

In regards to the landlord's allegation that there has been a breach of a material term of the tenancy agreement, I find that it is undisputed that the tenant had allowed an unauthorized guest inside the building. The tenant, however, disputes the fact that he has continued this behaviour after being given written notice to do so.

The *Act* requires that the landlord give written notice to the tenant that this breach could result in the end of this tenancy, and the tenant has the right to correct the problem within a reasonable amount of time afterwards. I find that the landlord has not established that the tenant has continued to breach any material term of the tenancy agreement. I find that the landlord has not met their burden of proof to show that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, and therefore an Order of Possession will not be granted on these grounds.

Although the landlord has expressed her concern for the safety of the building and other occupants, I find that the landlord did not provide sufficient evidence to support how the tenant's actions have put the property at significant risk. And despite allegations that this guest is a "streetworker", which may be disturbing to the landlord and other occupants of the building, this reference to her profession or potential illegal activity in contravention of the Criminal Code of Canada has not been sufficiently supported by the landlord. I am not satisfied that this concern or belief supports how the tenant's or the behaviour of his guest has seriously jeopardized the health or safety of the landlord or those in the building. I am also not satisfied that the tenant or his guest has unreasonably and significantly disturbed the landlord or other occupants to the extent that justifies the ending of this tenancy.

I find that the landlord has failed to demonstrate to the extent required that the tenant has contravened section 47 of the *Act*, and accordingly I am granting the tenant's application for cancellation of the 1 Month Notice. The tenancy will continue as per the current tenancy agreement and the *Act*.

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. I am not satisfied that the tenant had provided sufficient evidence to support that the landlord had contravened section 29 of the *Act*.

On this basis, the tenant's application for an order suspending or setting conditions on the landlord's right to enter the rental unit is dismissed with leave to reapply.

Although the tenant applied for an order to allow access to either himself or his guests to enter his own rental unit, the tenant did not sufficiently support how the landlord has contravened the *Act* in a manner that has prevented access to himself or his desired guests, I dismiss this portion of the tenant's application with leave to reapply.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated May 19, 2018. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The remaining portion of the tenant's application is dismissed with leave to reapply.

This Decision is final and binding on both parties.

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 19, 2018

Residential Tenancy Branch