



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

The tenant filed an application for dispute resolution on August 16, 2018, pursuant to section 59 of the *Residential Tenancy Act* (the “Act”), and she seeks the following relief under sections 47(4) and 62(3) of the Act:

1. an order to cancel a One Month Notice to End Tenancy for Cause (the “Notice”); and,
2. an order for the landlord to comply with the Act, the regulations, or the tenancy agreement.

This is my decision in respect of the tenant’s application.

A dispute resolution proceeding was convened on October 4, 2018 and two agents for the landlord (referred to hereafter as the “landlord”), the tenant, and the tenant’s legal advocate attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents. The landlord confirmed the correct legal spelling of its name, which is reflected in this Decision.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Is the tenant entitled to an order to cancel the Notice?
2. Is the tenant entitled to an order for the landlord to comply with the Act, the regulations, or the tenancy agreement?

Background and Evidence

The landlord testified that the tenant started the tenancy on April 15, 2015, and currently resides in the rental unit. On August 8, 2018, the landlord issued the Notice and served it on the tenant in person, with an effective end of tenancy date of September 8, 2018. Page 2 of the Notice (which was submitted into evidence) notes that the reason for the Notice being issued is “Breach of a material term of the tenancy agreement that was not corrected within a reasonable after written notice to do so.”

Regarding the material term, the landlord testified that it is a term of the written tenancy agreement—which was signed by the tenant, he added—that tenants must “keep the premises and grounds clean, tidy, and free of hazards, and to maintain the unit in good repair save only of normal wear and tear.”

Along with the Notice, the landlord provided a written letter dated August 8, 2018 (submitted into evidence) to the tenant that section 17(b)(i) of the tenancy agreement states that “The Tenant must maintain reasonable health, cleanliness & sanitary standards throughout the rental unit and the other residential property to which the tenant has access.” While a copy of that page of the tenancy agreement was not submitted into evidence, the parties did not dispute that this clause exists.

The letter further states that in “December 2016 you were previously served a written notice to your Unit for not maintaining a “reasonable health, cleanliness & sanitary standard” throughout your Unit.

In addition to this evidence, the landlord submitted six inspection report and ten photographs depicting the interior of the rental unit and of the balcony. The photographs depict the following: numerous cigarette butts on a patio table (with a yellow children’s riding toy on the ground next to the table); broken window blinds; a dark stain on the floor; a TV with things around it; a pair of pantyhose on the floor of the bathroom; an empty, opened pizza box on the top of a baking sheet, on top of the stove; three ribbons stuck to the ceiling (with what appears to be pushpins); and, more cigarette butts.

The landlord submitted that because the rental unit is an asset, they are obligated to ensure that it is protected, and the condition of the rental unit puts the property at risk. Further, the landlord must take into consideration the health and safety of other tenants in the building. The landlord also referenced broken window blinds which were not reported to the property manager, though the tenant is supposed to do so. Finally, the landlord submitted that the tenant is in breach of the tenancy agreement in

regard to the number of overnight guests that are permitted into the rental unit. He states that he has live video of the hallways and front entranceways and therefore knows who comes and goes. I note that the video was not submitted into evidence.

In its final submission, the landlord's executive director stated that there is a fundamental disagreement between the parties regarding what is meant by "reasonable health, cleanliness & sanitary standards."

The tenant's advocate argued that there is nothing in the submitted photos that constitute or establish the grounds on which the Notice was issued, and that the standard has not been met in this case.

In her testimony, the tenant testified and submitted that while her rental unit was untidy, it is "just like a normal person" would have their rental unit. She also spoke about the poor quality of the window blinds, and that they break easily; she did not believe that it was necessary to inform the property manager about this.

In regard to the cigarette butts on the balcony next to the children's toy, she testified that the children's toy is stored on the balcony, and that her child does not actually play on the balcony. She admitted to accidentally, on one occasion, sweeping the butts off the balcony. They landed on the ground below, which happens to be next to the office. She further testified that there is no evidence submitted by the landlord to establish that she was engaged in the destruction of property.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice indicated that the landlord was ending the tenancy for cause, pursuant to section 47(1)(h) of the Act, because the tenant "has failed to comply with a material term, and [. . .] has not corrected the situation within a reasonable time after the landlord gives written notice to do so."

Regarding the broken window blinds, while they are referenced in multiple inspection reports, I see only one instance (the August 8, 2018 letter to the tenant) in which the landlord references the issue of the broken blinds. While the tenant may have been aware of the broken blinds, as the landlord was, the landlord is required to give the tenant a "reasonable time" after providing written notice for the tenant to correct the situation. The Notice was issued on August 8, 2018. That is not a reasonable time, and as such I do not find that the landlord has established this ground on which the Notice was issued.

Regarding the issue of overnight guests, the landlord offered very little evidence to support its claim that the tenant is somehow in breach of the tenancy agreement's guest policy. While the landlord referenced a live video, nothing was submitted into evidence, and there were no dates, times, or any additional information to establish how the tenant may have breached the policy. As such, I do not find that the landlord has established this ground on which the Notice was issued.

Finally, regarding the issue of maintaining reasonable health, cleanliness and sanitary standards, I find that the landlord has failed to outline what *would* constitute reasonable health, cleanliness and sanitary standards. While I agree with the landlord that there is a fundamental disagreement between the parties as to what is meant by that phrase, a tenancy agreement's terms are to be interpreted in favour of the party who is negatively affected by them. The landlord is the party responsible for drafting the tenancy agreement and is therefore the party which must bore the consequences of vague drafting.

That having been said, and despite contract language often being subjective, I must address each aspect of the landlord's claim in this regard.

Is leaving an empty pizza box out unreasonable? I find that it is not. That it was on a baking sheet on top of the oven does not rise to a hazard. Indeed, the placing of anything on a stovetop would be a hazard. Is the dark stain on the floor an unreasonable? I find that it is not, especially given that the tenant has a child. Stains, spills, and dropping of liquids and non-liquids on floors is not an uncommon occurrence.

Is the leaving of cigarette butts on the balcony unreasonable? In this case, I find that it is unreasonable, and indeed the tenant's sweeping of the cigarette butts off the balcony and onto the ground below is unacceptable and unreasonable. However, as was the case with the blinds, the landlord gave written notice on August 8, 2018, the same date

on which the Notice was issued. The tenant testified that she made an error, and that she will be more dutiful in the future regarding the disposal of cigarette butts.

Taking into consideration all the oral and documentary evidence the parties presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the grounds on which the Notice was issued.

As such, the landlord's Notice, dated August 8, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

The tenant is, however, put on notice that as she has been warned, further failure to report broken blinds to the property manager (or any landlord property within the rental unit for that matter), or further failure to properly dispose of cigarette butts, may provide sufficient grounds for the landlord to end the tenancy in accordance with Act.

Conclusion

The landlord's Notice, dated August 8, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue 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: October 4, 2018

Residential Tenancy Branch