



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, OLC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for more time to dispute the One Month Notice, and for an order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation*, or the tenancy agreement.

The Landlord and the property manager (the “Landlord”) were present for the duration of the teleconference hearing, as was the Tenant. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package by registered mail. The Tenant confirmed receipt of the Landlord’s evidence package by in-person service.

The Tenant stated that she had evidence to submit and thought a support worker would be submitting it on her behalf. The evidence was not received by the Residential Tenancy Branch nor by the Landlord. The parties were informed that only the evidentiary material submitted prior to the hearing in accordance with the *Residential Tenancy Branch Rules of Procedure* would be considered as part of this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter

Although the Tenant applied for more time to dispute the One Month Notice, it was clarified during the hearing that she applied in time to dispute the notice. As someone else filed the Application for Dispute Resolution on her behalf, she was unsure of the reason for the request for more time.

Therefore, the Application was amended to remove the claim for more time, pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

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

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement?

Background and Evidence

The parties were in agreement that the tenancy began in approximately 2015. Current monthly rent is \$809.00 and a security deposit of \$375.00 was paid at the outset of the tenancy.

The parties were not in agreement as to when the Tenant began living on her own in the rental unit after a former co-tenant moved out. The Landlord stated that it has been since July 2018, while the Tenant stated that her co-tenant moved out in May 2018. Neither the original tenancy agreement, nor the new agreement with the Tenant were submitted into evidence.

The Landlord served the Tenant with a One Month Notice on August 28, 2018, by serving it to her in person. The Tenant confirmed receipt of the One Month Notice on August 28, 2018.

The One Month Notice, dated August 28, 2018, was submitted into evidence and notes the following as the reason for the notice:

- Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonable disturbed another occupant or the landlord

No further details of the cause were provided on the One Month Notice. The effective end of tenancy date of the One Month Notice was October 1, 2018. The Tenant applied to dispute the One Month Notice on August 29, 2018.

The Landlord provided testimony as to the reason why the One Month Notice was issued to the Tenant. They stated that the Tenant has been verbally abusive and disruptive to the property manager, as well as to other residents of the building.

Prior to July 2018, the Tenant lived with another person and due to conflict between the tenants, they were issued a One Month Notice. However, the Landlord stated that they withdrew the previous One Month Notice as the co-tenant had moved out and they wanted to provide an opportunity to the Tenant who was now living on her own.

The Landlord testified that although there has been a slight improvement since the co-tenant left the rental unit, the Tenant is still causing disturbances. This includes yelling at people over the balcony, causing noise and violent disturbances to other residents, arguing loudly, and swearing. The Landlord also testified as to an incident when the Tenant threatened another building resident with stating her possession of a gun.

The Landlord provided further testimony that the previous co-tenant still enters the property, despite not being allowed, and that further disturbances occur as a result of arguing and yelling between the Tenant and co-tenant. In a statement submitted in the evidentiary material from the Landlord, they note that a condition of tenancy with the Tenant was that the former co-tenant not enter the property.

The Landlord noted that these issues with noise and disturbance have been going on for a long time and that it is not fair to the Landlord or other residents. They stated that police have been called over 30 times regarding incidences with the Tenant and her former co-tenant, over a two-year period.

The Landlord submitted letters from other building residents into evidence. An email dated July 1, 2018, notes ongoing issues with the Tenant and the former co-tenant. The email notes screaming and noise that made it difficult to sleep. The email also notes that the former co-tenant swore at her all the time.

A second undated letter from a building resident notes occasions of loud yelling and profanities and states that there has been police involvement at times. The letter also

states that this resident was witness to the Tenant yelling over the balcony at the former co-tenant and that the yelling was very vulgar. The letter notes that it is not unusual to hear yelling and screaming coming from the rental unit where the Tenant resides.

A letter from the property manager, dated June 10, 2018, states that the former co-tenant was seen sneaking in the back door of the rental building. The letter also noted that the cops had attended the unit again.

In a note from the property manager dated June 23, 2018, she states that the Tenant was witnessed yelling over her balcony at the former co-tenant. The property manager stated that she told the Tenant to be quiet and to have some respect for the other residents of the building.

On August 6, 2018, the property manager wrote a note outlining the events that occurred that day. The note states that she heard the Tenant yelling loudly at the former co-tenant and when the property manager told her to stop, the Tenant called her a name. The note was signed by a witness.

A note dated August 18, 2018 states that the manager received a call from a building resident that the Tenant and former co-tenant were having a fight on the stairs. It was noted that this included yelling and screaming.

There were further letters and notes submitted involving concerns with the Tenant and former co-tenant that occurred in December 2017 and March 2018, prior to the co-tenant moving out.

A warning letter, dated August 20, 2017 was submitted into evidence regarding noise and other disturbances. The Landlord testified that no further written warnings have been provided, but many verbal warnings have been.

The Tenant provided testimony that she never spoke about or threatened possession of a gun to anyone. She stated that the police attended the rental unit at the time, but it was determined that it was a false claim made by someone else in the building.

The Tenant was in agreement that one time she called the property manager a name in a heated moment, but that she has since apologized. She stated that this is the only claim of the Landlord's that is accurate.

The Tenant provided further testimony that she is quiet in her apartment and does not yell and scream or cause any disturbances for other tenants.

The Tenant stated that the former co-tenant has not been at the building or in her rental unit, other than one time when he attended to move furniture. At the time he was moving furniture, the Tenant stated that he remained outside of the building.

The Tenant testified that she has been quiet, does not have company over, does not disturb other tenants in the building and that she has not seen her former co-tenant in a long time.

The Tenant has also applied for an Order for the Landlord to comply with the *Act, Residential Tenancy Regulation* or tenancy agreement. She stated that the property manager entered her apartment without her permission. She also stated that the Landlord has entered her storage locker and accessed her mailbox without her permission.

The Landlord stated that the property manager accessed the rental unit one day with a support worker as there was concern for the Tenant's safety. The property manager stated that she did not enter the rental unit, but was present at the time that the support worker was checking on the Tenant.

The Landlord also stated that they had mail for the former co-tenant that they could not provide to the Tenant. They also noted that there was one mailbox key which was provided to the former co-tenant which caused some issues with the Tenant accessing the mailbox until a new key could be provided.

The Landlord provided testimony that they were recently trying to sort out which storage locker belonged to which rental unit. They had asked the Tenant to identify her belongings in her storage locker to help with the organization and the Tenant became upset towards the Landlord. However, the Landlord stated that they never entered the Tenant's locker without her permission.

Analysis

I refer to Section 47(4) which states that a tenant has 10 days in which to dispute a One Month Notice. As the Tenant received the One Month Notice on August 28, 2018, and applied for Dispute Resolution on August 29, 2018, I find that she applied within the time allowable under the *Act*.

In accordance with Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid. As both parties providing conflicting testimony during the hearing, I look to the Landlord's evidence to establish their claim, over and above their testimony.

I accept the letters submitted into evidence by the Landlord, but find that the majority are related to issues that occurred between the Tenant and her former co-tenant.

An email submitted into evidence from another resident in the building, notes loud arguments between the Tenant and co-tenant. However, the Landlord confirmed that as of July 2018, the co-tenant no longer resided in the building and a new tenancy agreement was signed between the Landlord and the Tenant.

The Landlord testified that the former co-tenant has entered the building many times, despite not being allowed. The Tenant was not in agreement. However, I find insufficient evidence from the Landlord to establish the former co-tenant's presence on the property of the rental unit.

The Landlord stated in their evidence submission that the Tenant and co-tenant are not allowed to meet on the property as a condition of the Tenant's continued tenancy. However, I do not find evidence before me to demonstrate that the current tenancy agreement is conditional on the former co-tenant not entering the property. As such, I find that I cannot establish that the co-tenant has been entering the property, nor that he is not allowed to do so.

Based on the evidence before me, it seems that there was significant conflict between the Tenant and former co-tenant that resulted in arguments and raised voices that caused disturbances for the other building residents and the Landlord. However, I accept the testimony of the Landlord that the co-tenant had moved out by July 2018 and do not have sufficient evidence to prove, on a balance of probabilities, that the former co-tenant is still accessing the property or that he is not allowed to do so.

Based on the above analysis, I find that the Landlord, who bears the burden of proof, did not prove that the reasons for the One Month Notice are valid. Therefore, the One Month Notice, dated August 28, 2018, is hereby cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

However, I also provide a caution to the Tenant that this decision may serve as evidence of a warning regarding expectations for behaviour on the rental property and in the rental unit.

As for the Tenant's claim for an order for the Landlord to comply, given the conflicting testimony of the parties, I find insufficient evidence from the Tenant to establish that the Landlord has been entering the unit without permission, entering the storage locker or accessing the Tenant's mail. As such, I dismiss that Tenant's claims for an order for the Landlord to comply.

Conclusion

The One Month Notice to End Tenancy for Cause, dated August 28, 2018, is cancelled and of no force or effect. The tenancy continues until ended in accordance with the *Act*.

The Tenant's claim for an order for the Landlord to comply is dismissed.

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 17, 2018

Residential Tenancy Branch