



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70.

The landlord and the tenant's representative attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant's representative testified that the landlord was served the notice of dispute resolution package by express post on September 12, 2018. The landlord confirmed receipt of the dispute resolution package by September 14, 2018. While express post is not a method of service permitted under section 89 of the *Act*, I find that since the landlord received the notice of dispute resolution package, the landlord was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

2. Is the tenant entitled to an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70 of the *Act*?
3. If the tenant's application to cancel the Notice to End Tenancy is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2016 and is currently ongoing. Monthly rent in the amount of \$795.00 is payable on the first day of each month. A security deposit of \$387.50 and a pet damage deposit of \$387.50 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on August 31, 2018 the tenant was personally served with a One Month Notice to End Tenancy for Cause with an effective date of September 30, 2018 (the "One Month Notice"). The tenant's representative testified that the One Month Notice was posted on the tenant's door on August 31, 2018, not served in person. The tenant's representative testified that the tenant received the One Month Notice on August 31, 2018.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant's representative testified that on August 31, 2018 the resident caretaker and the maintenance man came to the tenant's door asking the tenant to sign a proof of service document for the One Month Notice. The tenant's representative testified that the tenant permitted the resident manager to come into the tenant's rental property and that the maintenance man just walked in after the resident manager without receiving express approval to enter.

The tenant's representative testified that he was in another room when the tenant allowed the resident caretaker to enter the rental property and that when he joined the tenant, the maintenance man, who was a large intimidating man, was hovering over the tenant trying to get her to sign the proof of service document. The tenant's representative testified that he asked the maintenance man to leave several times before the maintenance man left the subject rental property.

The tenant's representative testified that the tenant felt intimidated and forced into signing the proof of service document and that the maintenance man should not have entered the subject rental property without the tenant's explicit authorization to enter. The tenant's representative testified that based on this incident, the landlord's right to enter the subject rental property should be restricted.

The landlord testified that the resident caretaker wanted the maintenance man to accompany her because the tenant's representative is a large man and the resident caretaker felt intimidated by him.

The landlord entered into evidence a statement from the maintenance man which stated that he was asked to accompany the resident caretaker to the subject rental property because the resident caretaker was intimidated by the tenant's representative. The maintenance man stated that the resident caretaker knocked on the tenant's door and asked if she and the maintenance man could come in to talk and have the tenant sign the proof of service document.

The maintenance man's statement stated that the tenant did not object to him entering the door or staying by the threshold. The maintenance man's statement stated that the tenant's representative approached him and said, "you don't have to be here", and the tenant's representative then put his hand on the maintenance man's chest and pushed the maintenance man back over the threshold of the entrance door and closed the door. The tenant's representative testified that he did not touch the maintenance man.

The landlord stated that sometime between the late hours of August 26, 2018 and the early hours of August 27, 2018 there was a loud disturbance emanating from the tenant's rental property which resulted in the police being called. The tenant's neighbor, tenant J.R., submitted a signed statement of the events of August 27, 2018.

Tenant J.R.'s statement states the following. Tenant J.R. was woken up on August 27, 2018 to a woman screaming. Tenant J.R. stated that the disturbance was coming from

the tenant's rental property. Tenant J.R. stated that she looked up and down the hallway to see if any other people were woken up due to the disturbance but she did not see anyone and so she went back inside. Tenant J.R. returned to the hallway where she saw a young man with his back to her standing outside of the subject rental property. The young man walked to the exit and tenant J.R. did not see his face. Before the police arrived tenant J.R. saw an unknown woman in the hallway who told tenant J.R. that she had been beaten. Tenant J.R. saw the police exit the subject rental property. Tenant J.R. also saw the tenant's representative in the hallway on the night in question.

Tenant J.R.'s statement also stated that the tenant and the tenant's representative have woken her up on numerous other occasions from loud talking and other loud noises. Tenant J.R. stated that she was intimidated by the tenant's representative.

The tenant's representative testified that the incident in question occurred on August 25, 2018. The tenant's representative testified that he and the tenant were asleep when they heard a woman screaming for her life in the hallway. The tenant's representative testified that he got up and called 911. The tenant's representative testified that the 911 operator asked him to go into the hall and check on the status of the woman if it were safe to do so. The tenant's representative testified that he entered the hallway while remaining on the line with the 911 operator but that no one was there and so he returned to the tenant's rental property. The tenant's representative testified that when the police arrived he gave his statement to the police.

The landlord testified that on August 27, 2017 the tenant was provided with a caution letter which states that on August 26, 2018 "guests of tenant created excessively loud screaming, pounding, and thumping in the early hours of the morning. Police were called and attended. Tenant informed resident caretaker that her friend who was evicted from his rental suite elsewhere, is moving into the apartment. Tenants friend has been moving his personal household items into the building."

The caution letter goes on to state that the circumstances described above are a breach of Sec. 47(1) of the Residential Tenancy Act and a breach of a reasonable material term of the Standard Residential Tenancy Agreement. The caution letter states that the applicable grounds for ending the tenant's tenancy are section 47(1)(d) and section 47(1)(h) of the *Act*. Section 47(1)(d) states that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- Tenant or a 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.

Section 47(1)(h) of the *Act* states that that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- 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.

The caution letter states that “should there be any further incident or circumstances warranting termination of tenancy we will have no alternative but to issue a [One Month Notice to End Tenancy for Cause]”. The landlord testified that this was the first caution letter the tenant received.

The landlord testified that the tenant breached section 13 of the Tenancy Agreement by allowing the tenant's representative to move in with her without the permission of the landlord.

Clause 13 of the tenancy agreement states that “Only those persons listed in clauses 1 or 2 above may occupy the rental unit or residential property. A person not listed in 1 or 2 above who, without the landlord's prior written consent, resides in the rental unit or on the residential property in excess of fourteen cumulative days in a calendar year will be considered to be occupying the rental unit or residential property contrary to this Agreement. If the tenant anticipates an additional occupant, the tenant must apply in writing for approval from the landlord for such person to become an authorized occupant. Failure to obtain the landlord's written approval is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy on proper notice.” Clause 1 and 2 only list the tenant as an occupant.

The landlord testified that several of the tenant's neighbors have told the resident caretaker that the tenant's representative is living with the tenant. The landlord testified that the tenant told the resident caretaker that the tenant's representative was evicted from his property and so was moving in with her. When the resident caretaker told the tenant that this was not permitted, the tenant changed her story and said she was just helping out a friend for one month. The landlord testified that she has seen the tenant's representative enter the subject rental property with a key and without the tenant present.

The tenant's representative testified that he does not live with the tenant and has his own rental property. The tenant's representative testified that he does not have his own key but has used the tenant's keys to help her with groceries etc.

Analysis

One Month Notice

Based on the testimony of the landlord and the tenant's representative, I find that the tenant was served with the One Month Notice on August 31, 2018 in accordance with section 88 of the *Act*.

Section 47(1)(d)(i) of the *Act* states: a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The testimony of the parties in regard to who was responsible for the disturbance which occurred sometime between August 25-27, 2018, is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has not proved that the incident which occurred between August 25-27, 2018 was connected to the tenant. According to the statement of tenant J.R., the woman who was screaming was not the tenant and she did not see the screaming woman enter or exit the subject rental property. I am not satisfied, on a balance of probabilities, that the people responsible for the disturbance in question, were permitted on the subject rental property by the tenant.

Section 47(1)(h) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

Residential Tenancy Policy Guideline 8 states that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – 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.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find that the caution letter dated August 27, 2018 does not provide the tenant with a deadline to fix the alleged breach of a material term, that being the alleged extra occupant. I therefore find that the landlord has not met the written requirements to end a tenancy for breach of a material term, pursuant to Residential Tenancy Policy Guideline 8.

Landlord's Right to Enter

Section 70 of the *Act* states that the director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [*landlord's right to enter rental unit restricted*] if satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29.

Section 29(1) of the *Act* states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I find that the tenant gave permission for the resident caretaker and the maintenance man to enter the subject rental property on August 31, 2018, pursuant to section 29(1)(a) of the *Act*. I accept the tenant's representative's testimony that at some point he and the tenant asked the maintenance man to leave; however, I find that the tenant did not refuse the maintenance man entry into the subject rental property. I find that when the maintenance man was asked to leave the subject rental property, he did so. I decline to restrict the landlord's right to entry.

Conclusion

I find the One Month Notice to be of no force or effect.

I find that the landlord's right to enter the subject rental property under sections 29 and 70 of the *Act* is not restricted.

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 24, 2018

Residential Tenancy Branch