



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

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 Unpaid Rent (the “One Month Notice”), and for the recovery of the filing fee paid for this application.

The Landlord and the Tenant were present for the duration of the teleconference hearing. A witness for the Tenant joined the hearing to present testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package, but did not receive any evidence from the Tenant. The Tenant confirmed receipt of the Landlord’s evidence, and that she did not serve her evidence to the Landlord.

As the Tenant’s documentary evidence was not served to the Landlord in accordance with the *Residential Tenancy Branch Rules of Procedure*, it will not be considered as part of this decision. Verbal testimony from both parties, and the documentary evidence of the Landlord will be considered, as well as the One Month Notice which was submitted into evidence by both parties.

Both 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 Matters

The last name of the Landlord was spelled incorrectly on the Application for Dispute Resolution and was therefore amended to the correct spelling as confirmed by the Landlord. This amendment was made 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 Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on April 1, 2018. Monthly rent is \$1,700.00. A security deposit of \$850.00 and a pet damage deposit of \$425.00 was paid at the outset of the tenancy.

A One Month Notice was served to the Tenant in person on September 7, 2018. The Tenant confirmed receipt of the One Month Notice on September 7, 2018. The One Month Notice was submitted into evidence and states the following as the 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
 - Put the landlord's property at significant risk

Further details were provided on the One Month Notice as follows:

'Complete lack of trust with tenant. There is no communication between us and we have no idea who is staying in our home. We were told someone was a guest when she has in fact been living there for two months. Damage to suite & yard along with lack of upkeep. Unreasonable disturbance to landlord. Tenant is withholding former roommates belongings. Neighbours have mentioned there are a lot of comings and goings.'

(Reproduced as written).

The Landlord stated that in early September 2018 she was contacted by a former roommate of the Tenant regarding issues she was having with the Tenant. A letter from the former roommate, dated October 14, 2018 was submitted into evidence. The letter states that she was witness to the Tenant forging the Landlord's signature on a document. It also notes problems that occurred when the roommate and Tenant were living together. The former roommate states that when she moved out, the Tenant was holding her belongings and would not return them.

The Landlord testified that when contacted by the former roommate, she scheduled a walkthrough of the rental unit. While in the unit, she noticed that the entire living room was filled with the former roommate's belongings. She was concerned regarding the potential fire hazard due to the number of items piled in the room. The Landlord also became aware of this time that there was a new roommate residing in the home, although the Landlord had been told previously that this was a friend who was visiting.

The Landlord believes there are currently two additional occupants residing in the home, but states that the Tenant has not advised her of this. As the Landlord is not aware of who is living in the home, and who is coming and going, she is concerned for the safety of the property.

The Landlord also noted damage that has occurred in the home. She submitted photos into evidence showing damage to the wall in the entryway, damage to a doorframe, damage to the walls and trim, and damage to the blinds from the former roommate's cat. The Landlord submitted the move-in Condition Inspection Report to show the condition of the unit when the Tenant moved in.

The Landlord testified as to her concern regarding a 'Shelter Information' document which has her name and signature at the bottom. The Landlord stated that she did not sign this document and noted that her last name was spelled incorrectly. The document was submitted into evidence and appears to be a document regarding the former roommate.

The Landlord also stated that the Tenant was responsible for maintenance of the lawn, as stated on a tenancy agreement addendum. She testified that the Tenant has not been taking care of the lawn.

The Tenant provided testimony that she had a disagreement with her former roommate, but did not tell her to move out. After the roommate moved out, the Tenant asked her to

come back to the rental unit to pick up her belongings. The Tenant stated that she moved the items to the living room and the roommate picked up the items when she returned the key to the home, approximately two weeks after moving out.

The Tenant provided testimony that it was the former roommate that caused the damage to the walls. One mark in the wall was caused by the roommate moving furniture and the blinds were damaged by the roommate's cat.

The Tenant stated that the Shelter Information was provided to her former roommate, and she is not sure what the roommate did with this form or whether the Landlord signed it. She also stated that she had advised the Landlord's family member who resides in another unit in the home that she was unable to mow the lawn and the family member stated that they would take care of it.

The witness for the Tenant provided affirmed testimony that she was originally staying in the home as a guest, but when the former roommate moved out, she decided to stay.

The witness stated that the former roommate had access to come by the rental unit to collect her belongings and that they had been stored in the living room to keep them safe. She stated that the roommate had a key and on September 9, 2018, she attended the home to collect the remainder of her belongings and return the key.

The witness testified that the former roommate's cat caused damage to the blinds and that the wall was damaged when the roommate was moving furniture.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

I refer to Section 47(4) of the *Act*, which provides 10 days for a tenant to dispute a One Month Notice. As the Tenant received the One Month Notice on September 7, 2018, and applied to dispute the notice on September 13, 2018, I find that she applied within the 10 days allowable under the *Act*.

Therefore, the issue becomes whether the reasons for the One Month Notice are valid. I also note that when a tenant applies to dispute a notice to end the tenancy, the onus is

on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice was provided on two grounds, including that the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord, and that the tenant put the landlord's property at significant risk.

The parties were not in agreement as to what happened with the belongings of the former roommate. The Landlord stated that the Tenant was holding the roommate's belongings, which was also stated in a letter from the former roommate. However, the Tenant and a witness for the Tenant both provided testimony that the roommate had access to the rental unit to get her belongings and did so after keeping them at the rental unit for two weeks.

When both parties provide different accounts of what occurred, the party with the burden of proof must provide sufficient evidence over and above their testimony to establish their claim. In this case, I find insufficient evidence to prove that the events occurred as stated by the Landlord. Therefore, I cannot establish that the Tenant interfered with or disturbed another occupant or the Landlord through what occurred with the roommate's belongings.

The Landlord also noted that the Tenant was not maintaining the lawn as required by a tenancy agreement addendum, but I do not find sufficient evidence before me to determine that the maintenance of the lawn is not being upheld, or that other arrangements for lawn care were not made.

The One Month Notice was also issued due to damage in the rental unit. The Tenant was in agreement as to some of the damage, including damage to the blinds and a hole in the wall from furniture being moved. However, I note that Section 47(1)(d)(iii) states that the tenant or a person permitted on the property by the tenant has put the property at *significant risk*.

As the damage appears to be repairable, and does not seem to be related to an issue that raises concern for ongoing or continual damage, I do not find that it can be classified as a significant risk to the property. However, I do caution the Tenant that she has a responsibility to repair and maintain the rental unit as outlined in Section 32 of the *Act*.

The Landlord stated her concern regarding who is residing in the rental unit with the Tenant. However, I do not find sufficient evidence to establish that the Landlord's concern with the occupants in the home has caused unreasonable disturbance or significant risk to the property, as stated on the One Month Notice.

The Landlord has also claimed that the Tenant forged her signature on a document. However, the parties were not in agreement as to what occurred with the signing of the document and I do not find sufficient evidence to determine what took place.

Based on the above analysis, I do not find that the Landlord proved, on a balance of probabilities, that the reasons for ending the tenancy on the One Month Notice are valid. Therefore, the One Month Notice dated September 7, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenant was successful in her Application to cancel the One Month Notice, I award the recovery of the filing fee in the amount of \$100.00. Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 one time from her next monthly rent payment.

Conclusion

The One Month Notice, dated September 7, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from her next monthly rent payment to recover the filing fee paid for the Application for Dispute Resolution.

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 30, 2018

Residential Tenancy Branch