



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDC, FF, OPC

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on September 19, 2018 with an amendment made September 20, 2018 for:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for the Landlord’s compliance - Section 62;
3. A Monetary Order for compensation or loss - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on October 1, 2018 for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant confirms that she has made a monetary claim that is not related to whether or not the notice to end tenancy is valid or whether or not the tenancy is ended.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the monetary claim is not related to the validity of the notice to end tenancy or the matter of whether the tenancy will end and in order not to prejudice the Tenants’ claim for compensation that may have merit, I dismiss the claim with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid for the stated reasons?

Is the Landlord entitled to an order of possession?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The following are agreed facts: The tenancy, under written agreement signed by Tenant KN alone on June 14, 2018, started on July 1, 2018 for a fixed term to end July 1, 2019. Rent of \$1,000.00 is payable on the first day of each month. The Landlord collected a security deposit of \$500.00 prior to the tenancy start date. A pet deposit has not been paid. On September 7, 2018 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") with two stated reasons:

- Tenant has allowed an unreasonable number of occupants in the unit; and
- Security or pet deposit was not paid within 30 days as required by the tenancy agreement.

The Landlord states that the tenancy agreement requires the Tenant to pay a pet deposit of \$500.00 on August 1, 2018. The Landlord states that the Tenant was not able to come up with the funds to pay the pet deposit at the signing of the tenancy agreement so the Parties agreed to have it payable by August 1, 2018 as indicated on the tenancy agreement.

The Tenant states that when the tenancy agreement was signed there was a discussion about the amount of pet deposit that could be required as the Tenant did not know if the Landlord could ask for a half month's rent for a pet deposit. The Tenant states that the Parties only had a casual conversation about this and the Landlord had told the Tenant not to worry about the pet deposit. The Tenant states that she cannot recall any amount of pet deposit being payable on the tenancy agreement that she signed. The Tenant states that she never received an original copy of the tenancy agreement and that the Landlord only emailed her a copy after the Notice had been served. The Tenant states that the Landlord did raise the issue of a pet deposit in a letter dated August 16, 2018 that was given to the Tenant in person and that the Tenant did not read it immediately. The Tenant states that after receipt of this letter she did raise her belief that there was no agreement on a pet deposit and that Landlord told the Tenant "not to worry". The Tenant states that her pet became deceased on September 30, 2018.

The Landlord states that there was some discussion at signing about the amount of the pet deposit and that when the Landlord checked his copy of the tenancy agreement it said \$500.00 for the pet deposit. The Landlord states that he did tell the Tenant "not to worry" and that he meant that the Tenant did not have to worry about paying the pet deposit for September 1, 2018 as the Tenant informed the Landlord that she did not have both the rent and the deposit available for September 1, 2018.

The Landlord confirms that two Tenants (Tenant KN and Tenant AN) are named on the tenancy agreement and were originally contemplated for occupancy of the unit. The Landlord states that he has been led to believe that there are three occupants in the unit. The Landlord states that the basis for this belief comes from:

- a neighbour who says he has seen 4 persons coming and going from the unit;
- the frequent parking of a car belonging to someone other than the Tenant in the Tenant's parking spot;
- the Tenant obtaining a third parking stall; and
- the Tenant obtaining an extra fob. The Landlord states that the Tenant was only provided with one fob for the garage and one fob for the main door at the outset of the tenancy.

The Landlord provides an audio recording of the neighbour and photos of parked cars. The Landlord states that although a manager initially told the Landlord that there were several people living in the unit, the manager has since retracted that evidence. The Landlord states that he believes that the Tenant's daughter resides in the unit along with the Tenant's boyfriend. The Landlord states that three occupants are unreasonable as the unit only has one bedroom and a den, was only rented to one person, and is too small for more than one person. The Landlord states that the den is not suitable for use as a bedroom as it does not have an exit or window. The Landlord refers to a building code that "generally requires" such items. I note that the Landlord's letter of August 16, 2018 sets out that "only two tenants are allowed to reside at the premises". The Landlord agrees that both the Tenant and her daughter are named on the tenancy agreement as tenants and states that there was initial discussion about having two persons occupy the unit.

The Tenant states that only she and her daughter are living in the unit while her daughter attends post-secondary school. The Tenant states that her daughter's boyfriend visits overnight on some occasions and that her male friend visits sporadically or more often if the Tenant needs help. The Tenant provides copies of the driver's licences of both men indicating different residential addresses. The Tenant states that one of the Landlord's witness letters is from a tenant that faces the parking area and that this letter describes a Harley Davidson being parked in the Tenant's parking spot. The Tenant states that between herself and her daughter they own two cars and four motorcycles. The Tenant states that all her friends also have motorcycles and that none of them are Harley Davidsons. The Tenant states that the Landlord's real estate agent has been in the unit every two days for a period of time and that this person could inform the dispute that there was only "girls stuff" in the unit. The Tenant believes that the Landlord is trying to evict the Tenant for reasons related to the sale of the unit and that the Landlord informed the Tenants that the unit was sold. The Tenant submits a text conversation dated October 11, 2018 in which

the Landlord informs the Tenant that if she does not comply with vacating the unit the Landlord will have to serve another eviction notice as the unit was sold. The Tenant states that she feels harassed and watched by the Landlord coming around frequently and taking photos or videos. The Tenant states that the Landlord's evidence shows the stringent watching behavior of the Landlord. The Tenant states that the Landlord has been going through her mailbox to collect his mail that is left there.

The Landlord denies that he has never gone into the Tenant's mail box and states that he came around frequently to gather evidence and because he has friends in the building. The Landlord states that the property was sold and that although the possession date is for November 30, 2018 the sale may not go through. Although asked, the Landlord did not provide any reasons for why the sale would not go through. The Landlord states that if the Notice is found to be valid an order of possession for November 30, 2018 would be fine.

The Tenant confirms that the claim for an order that the Landlord comply is in relation to the Landlord's act to issue the Notice as part of the Tenant's argument that the Landlord has no basis to end the tenancy.

Analysis

Section 13(3) of the Act provides that within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement. Section 47(1)(a) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement. There is no dispute that the Tenant was never provided with an original tenancy agreement and was only provided a copy by email after the Notice was served. The Tenant gave plausible evidence of not recalling the requirement for a pet deposit. The Landlord does not dispute that the Tenant was informed that the pet deposit did not have to be paid on September 1, 2018. There is no evidence from the Landlord on whether there was any further agreement on when or how much of a pet deposit was subsequently required. The Tenant gave undisputed evidence that the pet has since become deceased. For these reasons I find that the Landlord has not substantiated on a balance of probabilities that the Tenant was required to pay a pet deposit prior to the provision of the Notice. As a result I find that the Landlord has not substantiated that the pet deposit was not paid within 30 days of the requirement to be paid.

Section 47(1)(c) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit. It is undisputed that there are currently two persons occupying the unit: the Tenant and her daughter. It is undisputed that the Landlord

originally contemplated these two persons for the occupation of the unit. This contradicts the Landlord's evidence that the unit is only suitable for one person. There is no evidence of any law that restricts a person from using any room in their home for sleeping purposes. Evidence of obtaining a second fob in the context of this two person occupation does not support that additional persons are occupying the unit. The Tenant gave undisputed evidence that she and her daughter own several vehicles. This evidence easily supports the desire for an extra parking space.

The Landlord has provided no direct evidence of other persons residing in the unit. The Landlord only provides indirect evidence of persons and vehicles being at the residence. This evidence could just as readily support frequent visits by friends, some who may even sleep over, as may be reasonably expected. The Landlord's evidence from the building manager in relation to occupants was rescinded by the manager. It is undisputed that the Landlord's real estate agent was inside the unit and yet the Landlord provided no evidence from this more reliable and direct source. The Landlord gave vague and evasive evidence in relation to the sale of the unit. Given the fixed term tenancy and an inability to end the tenancy before the end of the fixed term, the evidence of the sale and the Landlord's evasiveness on this point raises a question about the Landlord's bona fide reasons for issuing the Notice. Finally the Tenant has provided undisputed evidence of a residential address for both the Tenant's friend and her daughter's boyfriend. For these reasons I find that the Landlord has not substantiated that there are an unreasonable number of occupants in the rental unit. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues. As the Notice is not valid for its stated reasons I find that the Landlord is not entitled to an order of possession and I dismiss the Landlord's application in its entirety.

Although the Landlord has not been successful in substantiating the reasons for the Notice, the issuance of the Notice in itself is not evidence that the Landlord acted without right and I therefore decline to make any order in relation to the Landlord's compliance with the Act. I do however caution the Landlord to conduct himself in compliance with the Act's provisions that protect the Tenant's right to quiet enjoyment and privacy. Should the Landlord fail to comply with the Tenant's right to privacy the Tenant is at liberty to seek compensation should such a breach occur in the future.

As the Tenant has been successful with its claim to cancel the Notice I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and the tenancy continues. The Landlord's application is dismissed.

The Tenant may deduct \$100.00 from future rent payable in full satisfaction of the claim for recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 31, 2018

Residential Tenancy Branch