



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROTHERS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On October 15, 2018, a hearing was held to address the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*.

At the outset of the hearing, the tenant explained that he was interested in ending the tenancy and moving to other living accommodations, however he stated that he needed time to find another place to live. The landlord was agreeable to allowing the tenant more time to find other living accommodations, if the tenant actively engaged in seeking assistance from his mental health case manager and community resources to ensure the tenant would be successful in finding another place to live.

Given that it was uncertain how much time might be required, the landlord recommended adjourning the hearing to allow the tenant to demonstrate his intention to relocate, and ultimately find new living accommodations. The tenant agreed to an adjournment on these grounds, therefore the hearing was adjourned to allow the parties to resolve their dispute in a mutually acceptable outcome.

The parties were given specific instructions to maintain documentation and submit it as relevant evidence to the Residential Tenancy Branch and to share it with each other, at least one week prior to the reconvened hearing date.

The reconvened hearing was held on December 10, 2018 resulting in this Decision. The Decision is to be read in conjunction with the Interim Decision dated October 17, 2018.

At the outset of this hearing, the landlord confirmed receipt of the tenant's supplementary evidence submitted in advance of this reconvened hearing. The landlord confirmed that they did not submit any supplementary evidence in advance of this reconvened hearing.

Preliminary Issue - Procedural Matters

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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the notice?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This tenancy began on April 1, 2014 as a 12-month fixed-term tenancy with a scheduled end date of March 31, 2015. At the end of the fixed-term, the tenancy converted to a month-to-month tenancy and continues on that basis.
- Current monthly rent of \$760.00 is payable on the first of the month.

- At the beginning of the tenancy, the tenant paid a security deposit of \$382.50 which continues to be held by the landlord.

The One Month Notice dated September 10, 2018, submitted into evidence by the tenant, states an effective move-out date of October 31, 2018, with the following box checked off as the reason for seeking an end to this tenancy:

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

- *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The “Details of Cause” section of the notice states the following:

SEE RES MGR FOR PRIVATE TENANT REPORTS TO MGR ROBERT

The tenant confirmed he received the One Month Notice served to him by posting on the door on September 10, 2018. On September 20, 2018, the tenant filed an Application for Dispute Resolution to cancel the notice.

The landlord stated that the tenant’s behaviour and demeanour had somewhat improved since the first hearing. However, the landlord was still seeking to end the tenancy as the resident of the rental unit located below the tenant planned to give notice to end their tenancy if the tenant was not evicted as an outcome of the hearing. As well, the landlord referred to the supplementary evidence submitted by the tenant, chronicling his efforts to find other living accommodations, and provided their opinion that the tenant’s efforts were not a reasonable attempt. The landlord did not provide further testimony regarding the reasons for ending the tenancy but directed me to review their submitted documentary evidence.

I note that most of the incident reports submitted by the landlord are all dated after the issue date of the One Month Notice. Although a landlord may submit evidence to demonstrate a tenant’s continued contravention of the *Act* or tenancy agreement after a notice to end tenancy has been issued, the landlord must first prove the grounds for issuing the notice. As such, I have reviewed the incident reports dated September 3 and 8, 2018, which occurred prior to the issuance of the notice to end tenancy.

I find that both these reports pertain to a complaint from one resident, who resides below the tenant, regarding the tenant’s “pacing” during the night. The resident stated that they could “hear the heel strikes and creaks in floor boards”.

The landlord explained that the rental property was a three-level apartment building, with the tenant living on the second floor and the resident who has submitted complaints against the tenant residing on the first floor below the tenant. The landlord confirmed that the building is a wood-frame building, built in the early 1970's, and that the floors are carpeted.

The tenant testified that he has leg injuries which cause him to get up and walk around at night. He stated that he wears slippers. The tenant stated that he would be agreeable to moving to a first-floor unit if that would address the landlord's concerns.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant received the landlord's One Month Notice on September 10, 2018. The tenant filed an application to dispute the notice on September 20, 2018, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

In this matter, based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove the grounds for issuing the One Month Notice, as explained below.

From the incident reports dated September 3 and 8, 2018, it appears the landlord's main reason for issuing the notice to end tenancy is based on the complaints of one resident residing below the tenant's rental unit. The complaint pertains to the tenant walking around his rental unit at night, resulting in creaking floor boards and the sound from the weight of a person walking. There is nothing to indicate that the tenant is engaging in an activity, such as playing loud music, loud conversation, or running appliances, in contravention of the requirement to maintain quiet during the night time hours. The tenant has stated he has leg injuries and needs to walk around at night, and testified that he wears slippers to dampen any noise this creates. The parties confirmed that the flooring is carpeted. I can only conclude that this may be a "perfect storm" situation where the age of the wood-frame building combined with a resident below who may be a light sleeper has resulted in a situation that is disturbing for this resident.

However, I do not find that the landlord has provided sufficient evidence to prove that the tenant's actions have significantly interfered with or unreasonably disturbed another occupant, and therefore the landlord has not proven the grounds for ending this tenancy. The tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated September 10, 2018 is cancelled and of no force or effect, and this tenancy shall 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: December 17, 2018

Residential Tenancy Branch