



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, FFT

Introduction

On November 13, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One-Month Notice to End Tenancy for Cause, to restrict the Landlord’s entry, to order the Landlord to comply with the Act, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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

The Tenant submitted four separate claims as part of this Application and I was aware that we would not have the time to get to all of them during today’s hearing. I asked the Tenant to prioritize the issue that she wanted to address in this hearing and she agreed to focus on whether the tenancy would continue. For these reasons, I dismissed the request to suspend the Landlord’s right to enter and to order the Landlord to comply with the Act, with leave to reapply, and in accordance with Rule 2.3 in the *Residential Tenancy Branch – Rules of Procedure*.

Issues to be Decided

Should the One-Month Notice to End Tenancy for Cause, dated November 9, 2018 (the "Notice"), be cancelled, in accordance with Section 47 of the Act?

If the Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that there was no written Tenancy Agreement that set out the terms of this tenancy. The parties were in conflict regarding the amount of rent that the Tenant agreed to pay, if the tenancy started in May or June 2018, and what repairs/addition of fixtures the Landlord agreed to complete to the rental unit.

The parties did agree that the Tenant's rent was \$1,000.00 a month when she moved into the downstairs rental unit; that the Landlord collected a \$500.00 security deposit and that the Tenant moved into the larger upstairs rental unit in June of 2018.

The Landlord testified that she served a hand-written notice to end tenancy to the Tenant in early November 2018 and then followed up with a formal Residential Tenancy Branch – One-Month Notice to End Tenancy for Cause, which the Landlord stated that she taped to the Tenant's door on November 9, 2018. The Landlord said that the Notice provided a move-out date of December 31, 2018 and the reasons for the end of the tenancy.

The Landlord stated that when she started talking to the Tenant about an increase in rent, the relationship between her and the Tenant began to get difficult. The Landlord said that she issued the Notice to end the tenancy because the Tenant and a person permitted on the property by the Tenant, have significantly interfered with or unreasonably disturbed another occupant and the Landlord.

The Landlord provided a letter from each of the tenants that live downstairs, below the Tenant. They have complained to the Landlord about the Tenant's noise, how a male guest of the Tenant's has been intimidating, a disagreement that they have had with the Tenant about storage and how the Tenant has sent a letter to them about their barking dog.

The Landlord testified that she has felt that the Tenant has been unreasonably disturbing her by regularly texting her (the Landlord) about issues with the rental unit such as the sink not working or installing trim to deal with bugs that were entering the unit. The Landlord stated that the Tenant would threaten her by saying that she would speak to the Residential Tenancy Branch about the issue if the Landlord wouldn't respond to her demands.

The Landlord stated that she would like the tenancy to end and if an Order of Possession was issued, that she would be open to extending the vacate date until the end of January 2019.

The Tenant testified that she did not know about any complaints from the tenants below her until the Landlord texted her on October 31, 2018, and then received details in the Landlord's evidence package in mid-November 2018.

The Tenant stated that she has lived in the basement of the residential property and understands that, because of it being an old, wooden house, that noise travels easily between the rental units. She stated that she never intentionally caused noise for the tenants below.

The Tenant acknowledged that she has had correspondence with the Landlord about issues in the rental unit and also wrote a note to the tenants below about their dog that barks during the day. She stated that there have never been any threats to the tenants and felt as if she got along well with the tenants below.

The Tenant stated that she would like the tenancy to continue; however, has been frustrated in her discussions with the Landlord about rent, the raising of rent and the need for certain issues in the rental unit that required addressing.

Analysis

The Landlord testified that she served a One-Month Notice to End Tenancy for Cause on November 9, 2018, by taping it to the Tenant's door. The move-out date on the Notice stated December 31, 2018. The reasons stated on Page 2 of the Notice indicated that it was served as 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.

When I consider the validity of the reasons the Landlord has for ending the tenancy, I must determine if the Landlord has sufficient evidence to prove that the Tenant's actions significantly interfered with or unreasonably disturbed another occupant or the Landlord. The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the Notice are valid and that the Notice complies with Section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act.

I accept the Landlord's evidence that she has had some conflict with the Tenant about the terms of the verbal tenancy agreement; has received some complaints from the tenants below the Tenant; and, feels disturbed by the demands of the Tenant.

I accept the Tenant's evidence that she was unaware of the other tenant's concerns until very recently and that she too, has felt frustration with the ongoing debate about the terms of the tenancy.

I note that the *Residential Tenancy Act* uses the strong words "significantly" and "unreasonably" to ensure that Landlords can only end the tenancy if the issues with the Tenant are significant and/or unreasonable. Based on the Landlord's testimony and evidence, I find that the Landlord has failed to provide sufficient evidence to prove that the reasons for serving the Notice and attempting to end the tenancy are valid or meet the standard of significant or unreasonable.

As a result of the above testimony, evidence and findings, I cancel the One-Month Notice to End Tenancy for Cause, dated November 9, 2018, and find that the tenancy will continue until it is ended in accordance with the Act.

As this tenancy will continue and in consideration of the discussions between the parties during this hearing, I make the following orders, in accordance with Section 62(3) of the Act, to assist the parties to abide by the Act:

1. The Tenant will begin paying a monthly rent of \$1,200.00, as of January 1, 2019.
2. The tenancy, that was established on May 15, 2018, will continue on a month-to-month basis until ended in accordance with the Act.

3. The Landlord will prepare a Tenancy Agreement in writing, in accordance with Section 13 of the Act, and include the above noted terms.

Furthermore, I encourage the parties to review Section 29 of the Act regarding the restrictions on the rights a Landlord has to enter a rental unit.

As this tenancy will continue, I recommend to all parties that they work together to resolve their conflict in a respectful manner and when required, to communicate in writing to ensure clear understanding and as a means to keep track of their interactions.

As the Tenant's Application was successful, I find that she should be compensated for the cost of the filing fee, in the amount of \$100.00.

Conclusion

I order that the One-Month Notice to End Tenancy for Cause, dated November 9, 2018, is cancelled and that the tenancy will continue until it is ended in accordance with the Act.

I authorize the Tenant to deduct \$100.00 from a future rent payment in compensation for the cost of the filing fee, and in accordance with Section 72 of 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 21, 2018

Residential Tenancy Branch