



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding WESTERN COMMUNITY SENIORS LOW COST HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

On December 5, 2018, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") to cancel a One-Month to End Tenancy for Cause, (the "Notice") issued on November 26, 2018, for an order for the Landlord to comply with the *Act*, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, represented by two members of the Board, and the Tenant, represented by the Tenant, her Advocate and a support person attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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- Related Issues

I have reviewed the Tenant's application, and I note that the Tenant has applied to cancel a Notice to end tenancy as well as an order of the Landlord to comply with the *Act*. I find that the Tenant's request for an order for the Landlord to comply with the *Act* is not directly related to the Tenant's request to cancel the Notice. As this matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for an order for the Landlord to comply with the Act.

I will proceed with this hearing on the Tenant's claim to cancel the One-Month Notice and for the recovery of the filing fee paid for this hearing.

Issues to be Decided

- Should the Notice issued on November 13, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of the filing fee of her application?

Background and Evidence

The undisputed evidence is that the tenancy commenced May 1, 2006, as a month to month tenancy, rent is \$468 a month (as subsidized), and a security deposit of \$150 was paid at the outset of this tenancy.

The parties agreed that the Landlord served the Tenant was the Notice to end tenancy to on November 26, 2018, by personally serving it to the Tenant. The Tenant provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - *Significantly interfered with or unreasonably disturbed another occupant of 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.*
- *Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit/site property/park.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.*

The Landlord testified that on September 22, 2018, the local fire department attended the rental property in response to a fire alarm. The Landlord testified that the alarm had been triggered in the second floor in the hallway and that the Tenant's rental unit was located in that hallway. The Landlord testified that the Tenant did not evacuate her rental unit when the alarm sounded.

The Landlord testified that the fire department advised her that when they arrived on the scene, they received a report that smoke had been observed in the Tenant's rental unit. The Landlord testified that the fire department had to force their way into the Tenant's unit to order to get her to evacuate the building and that when the local fire department entered the unit, they found the Tenant unresponsive and lying on the couch. The Landlord also testified that the fire department reported that they had not found a fire in the Tenant's rental unit but that they had found a cigarette burning in an ashtray.

The Landlord testified that they are not able to determine why the fire alarm in the building had gone off. The Landlord submitted a copy of the incident report from the fire department into documentary evidence.

The Landlord testified that after the building had been cleared, it was discovered that an anti-tamper breaker lockout device had been removed from the Tenant breaker box and the power to the Tenant's fire detector had been turned off. The Landlord testified that the breaker lockout devices had been installed in every unit on January 31, 2018, to prevent the Tenants from turning off their smoke detectors. The Landlord testified that the breaker lockout device required a special key to remove the device and that only the Landlord held that key. The Landlord testified that they believe the Tenant removed the breaker lockout device by breaking it and had deliberately turned off the power to the fire detector in her rental unit. The Landlord testified that they feel the Tenant placed the Landlord and all the occupants of the rental property in significant danger when she turned off the power to her smoke detector and that she had caused extraordinary damage to the rental unit when she broke off the breaker lockout device.

The Tenant testified that she had not removed the breaker lockout device or turned off the power to her smoke detector in her rental unit, stating "I would not endanger my life like that." The Tenant asserted that, she believed, that it had been the property manager who had removed the breaker lockout device and turned off the power to her smoke detector. The Tenant testified that only the property manager had the key to remove the lockout device and that there is no way that she could have forcibly removed the device at her age.

The Landlord testified that she could not assume that the property manager had removed the breaker lockout device and turned off the power to the Tenant's smoke detector. The Landlord also testified the Tenant is responsible for whatever happens in the rental unit and that therefore the Tenant is responsible for the breaker lockout device being removed and the power turned off to her smoke detector.

Analysis

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

I find that the Tenant received the Notice on November 26, 2018. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenant had until December 11, 2018, to file her application to dispute the Notice. The Tenant filed her application on December 5, 2018, within the statutory time limit.

The Landlord indicated five reasons on the Notice as the cause for ending the Tenant's tenancy; I will address each one individually:

1) Significantly interfered with or unreasonably disturbed another occupant of the landlord.

I accept the Landlord's testimony that they are not able to prove why the fire alarm went off in the rental building on September 22, 2018. I have also carefully reviewed the Landlord's testimony and documentary evidence, and I find that the Landlord has not provided any evidence or offered any testimony that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I find the Landlord has failed to meet the onus to establish her claim on this point.

- 2) Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- 3) Put the landlord's property at significant risk.

I find that reasons two and three indicated on the Landlord's Notice to end tenancy to be related, and therefore, I will address them together. The Landlord argued that the Tenant had seriously jeopardized the health and safety of the other occupants and put the Landlord's property at risk by removing a breaker lockout device and turning off power to the smoke detector in her rental unit.

During the hearing, I heard contradictory testimony from both parties regarding who had removed the breaker lockout device and turned off the power to the smoke detector in the Tenant's rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

After careful review of the Landlord's documentary evidence, I find that the Landlord has not provided sufficient documentary evidence, to satisfy me, that it had been the Tenant who had removed the breaker lockout device and turned off the power to the smoke detector in her rental unit. Overall, I find there is an absence of physical evidence that would outweigh the contradictory verbal testimony of the parties. Therefore, I find the Landlord has failed to provide evidence sufficient to show cause that the Tenant had put the Landlord, the Landlord's property or any other occupant at significant risk, sufficient to terminate the tenancy.

- 4) Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit/site property/park.

The Landlord argued that the Tenant had damaged the rental unit when she removed the breaker lockout device. I accept the testimony of both parties that the breaker lockout device installed in the Tenant's rental unit had been removed. However, after review of the Landlord's testimony and documentary evidence, I find that the Landlord has not provided documentary evidence to show that the Tenant had damaged the breaker lockout device during her tenancy. Therefore, I find that the Landlord has not proven her claim that the Tenant or person permitted on the property by the Tenant had caused extraordinary damage to the rental unit sufficient to terminate the tenancy.

- 5) Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

I accept the testimony of the Landlord that no written notice had been provided to the Tenant regarding a breach to a material term of her tenancy agreement. Due to the failure of the Landlord to issue a written notice to the Tenants of a breach of a material term, I find the Landlord has failed to meet the requirements to end the tenancy on this point.

Conclusively, I find that the Landlord has not proven cause sufficient to terminate the tenancy for any of reasons given on the Notice she issued. Therefore, I grant the Tenant's application to cancel the Notice issued on November 26, 2018, and I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in her application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for her application. The Tenant is allowed to take a one-time deduction of \$100.00, from her next month's rent.

Conclusion

The Tenant's application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00, from her next month's rent

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: January 21, 2019

Residential Tenancy Branch