



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHURCHILL INVESTMENTS LTD
FIRSTSERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes OPC, FFL; MT, CNC, LAT, LRE, MNDCT, OLC, RP

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing dealt with the tenant's cross-application pursuant to the *Act* for:

- more time to make an application to cancel the landlords' 1 Month Notice to End Tenancy for Cause, dated September 19, 2018 ("1 Month Notice"), pursuant to section 47;
- cancellation of the landlords' 1 Month Notice, pursuant to section 47;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- an order requiring the landlords to perform repairs to the rental unit, pursuant to section 33.

The landlords' three agents, "Landlord OF," "landlord DD" and landlord SW ("landlord"), the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord OF and landlord DD confirmed they were the building managers and the landlord confirmed that he was property manager and that all three had permission to

represent the two landlord companies named in this application as agents (collectively “landlords”). The tenant confirmed that her agent, who is her daughter, had permission to speak on her behalf at this hearing. This hearing lasted approximately 74 minutes.

Preliminary Issue - Previous Hearings and Service of Documents

This hearing originally occurred on November 26, 2018 (“original hearing”). A decision, dated November 26, 2018, (“original decision”), was issued by a different Arbitrator after the original hearing. The landlord attended the original hearing and the tenant did not. The original decision granted the landlords a two-day order of possession (“original order of possession”) and a \$100.00 monetary order to the landlords for the application filing fee to be deducted from the tenant’s security deposit (“original monetary order”). The tenant’s entire application was dismissed.

The tenant applied for a review of the original decision, alleging she was unable to attend. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated November 29, 2018 (“review decision”). As per the review decision, the tenant was required to serve the landlords with a copy of the review decision and the notice of review hearing.

The landlord confirmed receipt of the above review documents from the tenant. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the required review documents from the tenant.

Preliminary Issue - Service of Both Parties’ Original Applications and 1 Month Notice

Both parties confirmed receipt of the other party’s original application. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party’s original application.

The tenant’s agent confirmed receipt of the landlords’ 1 Month Notice on September 19, 2018. The notice indicates an effective move-out date of October 31, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords’ 1 Month Notice on September 19, 2018. A copy of the notice was provided for this hearing.

Issues to be Decided

Is the tenant entitled to more time to cancel the landlords’ 1 Month Notice?

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to recover the filing fee for their application?

Is the tenant entitled to change the locks to the rental unit?

Is the tenant entitled to an order restricting the landlords' right to enter the rental unit?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to perform repairs to the rental unit?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2014. Monthly rent in the current amount of \$766.00 is payable on the first day of each month. A security deposit of \$340.00 was paid by the tenant and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement and a copy was provided for this hearing.

Both parties agreed that the landlords issued the 1 Month Notice for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or 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 a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
 - *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord stated that the tenant has refused entry into the rental unit repeatedly for repairs, even when she requested the repairs herself. He claimed that she assaulted the building manager landlord DD and another occupant in the rental building in September 2018. This occupant and another witness provided letters regarding the assault to the occupant. Landlord DD and another occupant provided letters regarding the assault to landlord DD. The landlord explained that the tenant intentionally caused the leak to the unit below, by filling her bathroom sink and bathtub with hot water, not activating the fan, and allowing the water to drip to the unit below. The landlord said that the police had to be called to talk to the tenant, in order for her to provide access to her rental unit to landlord DD and a contractor, in order to replace the tenant's bathroom sink to prevent further leaking in September 2018.

The landlord said that since the 1 Month Notice was issued to the tenant, other occupants in the rental building have threatened legal action verbally and in writing, against the landlords if they do not do anything about the tenant's behaviour. He stated that the problems have escalated because of the tenant. He claimed that the tenant's agent also assaulted another occupant living on the same floor as the tenant, which the tenant's agent denied by claiming this person was much bigger and taller than her.

Landlord DD testified that he got four to five calls from the occupant living below the tenant's rental unit because there was water dripping from his ceiling in his bathroom. He said that the call came after-hours, around 7:00 p.m. on September 14, 2018, so he went to go and check that occupant's unit and saw the dripping water and was concerned about mold. He stated that this was considered an emergency so he went and knocked on the tenant's door, he heard people talking inside her unit, he announced that he was the building manager, and there was no answer to the door. Landlord DD claimed that he went down the hallway of the same floor to get another occupant as a witness. He explained that he went back again to knock on the tenant's

door, there was no answer, so he used his master key to gain access but there was a chain on the lock so he could not go any further. He said that he announced again that he was the building manager and for the tenant to remove the chain from the door lock, which she did. He claimed that the tenant was present with her daughter, he went to check the leak in the bathroom, he asked why the tenant's bathroom sink and bathtub were full of water and no fan was activated, but the tenant said that she did not do anything as she was just taking a bath. He said that he checked below the sink and there were water drops as well as condensation from no fan being turned on. He explained that the tenant told him there was no water in the kitchen, he went to check and the tenant assaulted him by using a spray bottle to spray cleaning solution on his face. He said that he had to go and wash his face and eyes after. Landlord DD provided a letter regarding same, for this hearing. He explained that the other occupant witnessed this event and provided a letter regarding same, which was supplied by the landlords for this hearing.

Landlord DD confirmed that in September 2018, the police had to be called in order to talk to the tenant to convince her to provide access to the rental unit for him to replace the bathroom sink. Landlord DB claimed that the police talked to the tenant and then told him it was okay for him and the contractor to go into the rental unit. He stated that the police stayed initially to make sure everything was okay, but they could not stay for the entire two-hour appointment to replace the sink.

The tenant's agent testified that she is entitled to live with the tenant, since she is family, despite the landlord's claims that she is not authorized to be there. She stated that the tenant's neighbours are making up lies, stating that the tenant is causing problems and doing bad things in the rental building, which are not true. She said that all other occupants in the rental building like the tenant, except for the neighbours living closest to her on one side, which the landlords use against the tenant. She explained that the male occupant who lives below the tenant's rental unit is not authorized to be there, since the occupant is his girlfriend, not him. She claimed that the tenant's neighbours bang on their walls and ceiling causing items to fall from the tenant's cabinet. She stated that the neighbours knock really loudly, keep their fan on every night so she and the tenant cannot sleep, and open their doors and yell at her. She said that the tenant's tires have been slashed and her storage locker gets stuck, since the tenant is being harassed by the landlord and other occupants. She confirmed that no police reports have been filed by the tenant for these incidents.

The tenant's agent claimed that on September 14, 2018, landlord DD "barged" into the rental unit at 11:00 p.m., ran to the bathroom and accused the tenant of causing a leak. She said that there are no photographs to prove this leak. She maintained that landlord DD went into the kitchen and played with the faucet, causing water to spray everywhere. She explained that landlord DD was screaming and yelling at the tenant, so the tenant grabbed a water spray bottle to cover her face as a reaction to protect herself. She maintained that the tenant did not spray anything on landlord DD. She said that the tenant has not denied entry or access to the rental unit, she just wants proper notice because she does not like strangers in her unit. She claimed that the building managers have "no education or knowledge" and they continue to provide appliances to the tenant that keep breaking down all the time, so the tenant does not want them entering the rental unit for that purpose.

The tenant seeks a monetary order of \$3,500.00 for furniture that she said she had to replace because of the bed bugs in the rental unit. She seeks \$1,500.00 for a couch, \$1,000.00 for a bed, and \$1,000.00 for chairs. She provided photographs, medical notes, and letters with her application. The tenant's agent said that she had debit receipts for these costs but the tenant did not provide them for this hearing. She stated that wasps were attracted to the tenant's rental unit, despite the traps that the landlord put there. She claimed that the building managers brought in bed bugs when they came to inspect the wasps in the unit, so the tenant had to throw away her furniture because of the bed bugs. She explained that the landlord hired a company to spray for moths in the rental unit on May 9 and 25, 2018, while the tenant was not present, only giving notice to the tenant months later after the spraying was complete. She testified that the chemical in the spray caused the tenant to get sick with puffy eyes and was "attempted murder" because it poisoned the tenant.

The landlord disputed the tenant's monetary claim indicating that no treatments were done for bed bugs, only moths, in the rental unit. The landlord stated that the tenant's medical reports were from 2014 including from her dentist, not five months prior when the tenant claimed the spraying and her injuries occurred.

Analysis

1 Month Notice

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on September 19, 2018,

and filed this application to dispute it on October 17, 2018, almost one month later. Therefore, the tenant is not within the time limit under the *Act*.

Section 66 allows me to grant more time to the tenant to dispute the 1 Month Notice in exceptional circumstances. The tenant's agent stated that the tenant needed time to gather her evidence for her monetary claim, including her medical notes, so she was unable to apply to dispute the notice within 10 days. I find that this is not an exceptional reason and is unrelated to the 1 Month Notice, as the monetary application is separate from the notice to end tenancy and the tenant had 14 days before this hearing to provide all of her evidence, as per the Residential Tenancy Branch *Rules of Procedure*. The tenant's application for more time to cancel the 1 Month Notice is dismissed without leave to reapply.

On a balance of probabilities and for the reasons stated below, I find that the landlords issued the 1 Month Notice for a valid reason. I find that the tenant significantly interfered with and unreasonably disturbed the landlords and other occupants at the rental property. Since I have found one of the reasons on the notice to be valid, I do not need to examine the other reasons.

I accept the testimony of landlord DB that he was assaulted by the tenant on September 14, 2018, when the tenant sprayed something in his eyes as he was attempting to inspect a leak in the tenant's rental unit. This was witnessed by another occupant in the rental building who provided a witness letter with the landlords' evidence. The tenant's agent agreed that the tenant used a spray bottle but I do not accept that she used it to defend herself from landlord DD.

I accept the landlord's and landlord DB's testimony that the police had to be called in order to convince the tenant to give the landlords and their contractor access to the rental unit in September 2018, to replace the tenant's bathroom sink.

I accept the landlord's evidence that the tenant has repeatedly refused access to the rental unit for necessary inspections and repairs, as this was admitted by the tenant's agent who said that the tenant did not think the landlord was being effective or bringing workable appliances in the unit. I accept the landlord's evidence that he has received numerous verbal and written complaints from other occupants in the rental building, regarding the tenant's behaviour of yelling, arguing, and causing disturbance.

The landlords provided witness letters from other occupants in the rental building regarding these incidents. The landlords also provided notices of inspection to gain

entry into the unit and written notes from the tenant refusing access to her rental unit and asking why the landlord keeps trying to gain entry for repairs, and denying that any leaks that were occurring.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I dismiss the tenant's application to cancel the 1 Month Notice. I find that the landlords' 1 Month Notice complies with section 52 of the *Act*. Accordingly, I grant the landlords' application and find that the landlords are entitled to an Order of Possession effective two (2) days after service on the tenant, pursuant to section 55 of the *Act*.

Since this tenancy is ending, I dismiss all of the tenant's remaining claims, except for the monetary claim, which is addressed below.

Tenant's Monetary Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the tenant's application for \$3,500.00 without leave to reapply. The landlords disputed the tenant's claims.

I find that the tenant failed to provide sufficient documentary evidence that she suffered the losses that she claimed. The tenant did not provide receipts or invoices for the cost of the furniture that she said she had to replace. The tenant's agent said that she had debit receipts but they were not provided with the tenant's evidence.

Review Hearing

Section 82(3) of the *Act* states:

Following the review, the director may confirm, vary or set aside the original decision or order.

Accordingly, I confirm the original decision, original two (2) day order of possession granted to the landlords, and original monetary order for the \$100.00 filing fee granted to the landlords, all dated November 26, 2018.

As per the original decision, the landlords are entitled to retain the \$100.00 filing fee from the tenant's security deposit of \$340.00. The remainder of the tenant's security deposit in the amount of \$240.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

This decision is to be read together with the original decision.

Conclusion

The original decision, original order of possession and original monetary order, all dated November 26, 2018, are confirmed.

This decision is to be read together with the original decision.

I order the landlords to retain \$100.00 from the tenant's security deposit of \$340.00. The remainder of the tenant's security deposit in the amount of \$240.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The tenant's entire application is dismissed without leave to reapply.

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 25, 2019

A handwritten signature in black ink that reads "a Martin". The signature is written in a cursive, lowercase style.

A. Martin, Arbitrator
Residential Tenancy Branch