



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they were handed the 1 Month Notice by the landlord's agent (the agent) on November 26, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. The tenant testified that they handed the landlord a copy of the tenant's dispute resolution hearing package a few days after the tenant received a copy of the Notice of Dispute Resolution Hearing from the Residential Tenancy Branch on November 28, 2019. Although the agent testified that they did not receive a copy of the dispute resolution hearing package from the landlord until December 9, 2018, the agent confirmed that they had received this package. Under these circumstances, and as a tenant is only required to serve a copy of the dispute resolution hearing package to the landlord, in this case the name identified on the 1 Month Notice, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

The tenant gave sworn testimony that they handed a copy of their written evidence directly to the landlord well in advance of this hearing. The agent testified that no written evidence was supplied to the agent and that the agent was unaware of any

written evidence having been served to the landlord by the tenant. At the hearing, I noted that the tenant's written evidence was limited to information that was either attached to the dispute resolution hearing package or information that the landlord provided to the tenant (i.e., a copy of the Residential Tenancy Agreement signed by the landlord on August 1, 2018, and a copy of the 1 Month Notice, served to the tenant by the agent). The agent testified that they had not obtained a copy of the Residential Tenancy Agreement from the landlord and, in fact, had no knowledge as to any of the monetary terms of that Agreement, including the monthly rent, the security deposit and the pet damage deposit, or when this tenancy began. In this case, I have considered only those portions of the tenant's written evidence that the landlord provided to the tenant (i.e., the Residential Tenancy Agreement and the 1 Month Notice), which I find were served to the landlord in accordance with section 88 of the *Act* based on the tenant's first-hand sworn testimony.

The agent gave sworn testimony supported by written evidence that the tenant was served with copies of the landlord's written evidence by registered mail on January 2, 2019. The agent provided a copy of the Canada Post Tracking Number and Customer Receipt to support this evidence. The tenant testified that they had not received this written evidence, nor had they received any notification from Canada Post that this evidence package was available for pick up. The tenant testified that the landlord lives upstairs in this two unit home, and that when the landlord is away, as has recently been the case, the tenant does not receive mail placed in the landlord's mailbox.

Section 3.15 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure establishes that the Respondent's evidence in a dispute resolution hearing must be received by the Applicant not less than seven days before the hearing. In this case and in accordance with sections 88 and 90 of the *Act*, I find that a copy of the Respondent's written evidence was deemed received by the tenant on January 7, 2019, three days before this hearing. Under these circumstances, I have not considered the landlord's written evidence as it was not deemed served within the time period established by Section 3.15 of the Rules of Procedure, and the tenant testified that they have not yet received notice that registered mail is available for pickup at the local Canada Post office.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The agent did not dispute the following contents of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the tenant and supported by the tenant's sworn testimony. As was noted earlier, the agent testified that they had not obtained a copy of the Agreement from either the landlord or the tenant. The parties signed the Agreement on August 1, 2018 for a month-to-month tenancy that allowed the tenant to gain occupancy of this basement suite below the landlord's portion of this home on July 28, 2018. Monthly rent is set at \$1,000.00, payable in advance on the first of each month. The tenant paid a \$500.00 security deposit and a \$100.00 pet damage deposit on or about August 1, 2018.

The landlord's 1 Month Notice cited the following reasons for ending this tenancy for cause by December 31, 2018:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *put the landlord's property at significant risk.*

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.*

At the hearing, the agent testified that no charges have been laid against the tenant for any illegal activity occurring at this property. The agent said that the police were contacted, but they advised that the RTB provided the appropriate venue for considering issues raised by the landlord with respect to the tenant's activities.

The agent asserted that the tenant's actions in unplugging the landlord's surveillance camera for this property constituted one such illegal activity undertaken by the tenant during this tenancy. The tenant confirmed that on one occasion he unplugged the surveillance camera outside the tenant's door to access the electrical outlet used by the surveillance camera. The agent testified that the landlord had told him that the tenant

had unplugged the surveillance camera on an ongoing basis and that this was not a single incidence as described by the tenant.

The only other illegal activity identified by the agent during this hearing was the landlord's claim that the tenant placed an advertisement on a popular website to sell a cathouse that the landlord had purchased for this property, but which the landlord no longer needed. The tenant did not dispute this assertion, but maintained that they did so at the landlord's bidding and that the tenant's phone number appeared on the listing because it was the defaulted phone number attached to the tenant's account on that website. The tenant testified that once the landlord raised concerns about the phone number on the listing and about the tenant's placement of this advertisement, the tenant immediately cancelled the listing.

In the Details of the Dispute included in the landlord's 1 Month Notice, the landlord provided the following information regarding the reasons for issuing that Notice:

Tenant has been vulgar and loud with landlord, continues to tell her to "shut up" anytime she raises an issue.

Tenant has photographed the owner's belongings and tried to sell them online without her consent.

At the hearing, the tenant said that they had been attempting to find alternate assisted accommodation with the help of various housing related agencies. The tenant said that they were interested in moving as soon as possible but thus far, the tenant had been unable to find suitable housing on his income. The tenant gave undisputed sworn testimony that the landlord had advised that the landlord was intending to sell the property in the spring or early summer and that the landlord wanted the tenant to vacate before the property is listed for sale.

At the hearing, the agent's sworn testimony centered on events that transpired during the agent's attempt to serve the 1 Month Notice and on the difficulties that the agent has encountered in communicating with the tenant. The agent testified that the landlord had authorized the agent to modify the effective date of the 1 Month Notice to enable the tenant to remain in the rental unit until the end of February, as the landlord realized that the tenant was scheduled for surgery early in February. The agent maintained that the tenant was defensive and difficult to deal with after having received the 1 Month Notice, and that the tenant had been "vulgar" and yelled at the landlord. The landlord confirmed that the landlord had not sent the tenant any written warning letters regarding

his activities as almost all of the non-oral communication between the parties had been by way of text messages.

The agent also disputed the tenant's claim that alternate accommodation was difficult to find in this community at this time. The agent said that they were very familiar with the local housing market, as their company was the major property manager for rental housing in this community. The agent maintained that the tenant's difficulties in finding rental housing were exaggerated and may be affected by the multiple dogs the tenant keeps and the tenant's lack of adequate references.

The tenant confirmed that they did tell the landlord to "shut up" on one occasion, but that he was never vulgar with the landlord. The tenant said that he helped with the landlord's care of the property, particularly with the landlord's horse. The tenant maintained that the landlord is difficult to deal with on some occasions, and described an incident where both parties contacted the police with respect to the landlord's attempt to have the local police tow his vehicle.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 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. If the tenant makes such an application, as occurred in this instance, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

The agent did not dispute the tenant's assertion that the tenant only communicated with the agent once prior to November 26, 2018, the day when the agent handed the tenant the 1 Month Notice. Although I have given the agent's sworn testimony due consideration, I find that events that have occurred since the landlord's issuance of the 1 Month Notice have very little bearing on whether the landlord had sufficient grounds at the time the 1 Month Notice was issued to end this tenancy for cause. Thus, I attach very little weight to the agent's sworn testimony regarding events that transpired during the service of the 1 Month Notice and events that have occurred since then. Similarly, the agent's opinion as to whether the tenant has been truthful in the testimony regarding attempts to secure alternative housing is of no relevance to the task to be considered during this hearing. The landlord's responsibility is to demonstrate on a balance of probabilities that at the time the 1 Month Notice was issued that the reasons cited for ending this tenancy were sufficient to end this tenancy for cause.

At the hearing, the agent asked that his sworn testimony, based on his discussions with the landlord about the tenant's interactions with the landlord, be given similar weight to that provided by the tenant. While I have given this request due consideration, without any written evidence or sworn testimony from the landlord, I find that the best evidence as to conversations between the tenant and the landlord prior to the issuance of the 1 Month Notice was the direct, first-hand sworn testimony provided by the tenant. Although the agent provided first-hand testimony regarding events relating to the service of the 1 Month Notice and events subsequent to that time, the agent's knowledge of the details preceding November 26, 2018 was limited, even to the extent that the agent had no copy of the Agreement, nor did the agent know any of the monetary or other terms of that Agreement.

I accept that some of the agent's testimony was no doubt based on the agent's review of text messages referenced by the agent during this hearing. The agent produced no written evidence that could be considered during the course of this hearing to substantiate these allegations. Similarly, the agent provided no written statement by the landlord, the person who considered the tenant's interactions with the landlord vulgar and loud. The agent provided no evidence that any written warning had been provided to the tenant that a continuation of any of the actions that eventually led to the issuance of the 1 Month Notice could end this tenancy for cause. The agent said at the beginning of this hearing that the landlord would be available to provide sworn testimony; the agent's assistant was unable to locate the landlord to participate in this hearing when they attempted to do so.

On a balance of probabilities, I find that the landlord has supplied insufficient evidence to demonstrate that the incidents identified as "illegal activity" entitle the landlord to obtain an end of this tenancy for cause pursuant to paragraph 47(1)(e)(ii) and (iii) of the *Act*. The agent provided significantly less evidence than would be required to obtain an end to this tenancy on the basis that tenant's unplugging of the landlord's exterior surveillance camera aimed at the entrance to the tenant's rental suite constituted "illegal activity" as outlined in paragraph 47(1)(e) of the *Act*. On this point, I also note that the parties provided conflicting testimony regarding the frequency of the unplugging of the surveillance camera. The tenant gave direct sworn testimony that this happened on a single occasion when the tenant needed that electrical outlet for another purpose. The agent gave second-hand sworn testimony that the landlord, who was not in attendance, asserted that the tenant had unplugged the surveillance camera a number of times.

There was also conflicting testimony regarding the circumstances surrounding the landlord's claim that the tenancy should be ended because the tenant had attempted to sell some of the landlord's possessions online. The tenant gave undisputed sworn testimony that he understood that he was taking this action on the landlord's behalf and at the landlord's request. When the landlord raised a concern about the tenant's telephone number being listed as the contact for this online sale, the tenant said that he removed the advertisement from the website. Although the agent maintained that the tenant's actions constituted illegal activity, the landlord produced no written evidence to support the assertion that the tenant continued to try to sell the landlord's item in question (i.e., the cathouse), even after the landlord raised concerns about this matter. Again, I find that the landlord has not demonstrated to the extent required that what appears to have been a single incident in which the parties appear to have been operating under a different set of understanding as to the landlord's instructions constituted sufficient grounds to show that the tenant's actions constituted "illegal activity" as described in section 47(1)(e) of the *Act*.

Turning to the remaining reasons cited in the landlord's 1 Month Notice, I note the following wording of paragraph 47(1)(d) of the *Act*, which enables a landlord to end a tenancy for cause if the landlord can meet the burden of proof to demonstrate:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,...

(iii) put the landlord's property at significant risk;...

In this case, I find that the landlord has again provided insufficient evidence to demonstrate on a balance of probabilities that the tenant's interaction with the landlord entitles the landlord to obtain an end to this tenancy for either of the above reasons.

There is very little evidence before me from either party, other than the sworn testimony of the tenant and the agent, to assess the extent to which the tenant's communication with the landlord significantly interfered with or unreasonably disturbed the landlord. Although the tenant confirmed that he told the landlord to shut up on one occasion, the tenant disputed the assertion that his communication with the landlord was inappropriate to the extent that the landlord could end this tenancy for cause on the basis of significant interference with or unreasonable disturbance having been caused by the tenant. The agent, who was basically uninvolved in this matter until the issuance

of the 1 Month Notice, provided sworn testimony to the contrary, but again supplied no written statement by the landlord, nor did the landlord attend the hearing to provide direct sworn testimony to support this reason for ending the tenancy.

Under such circumstances, the burden of proof rests with the landlord. While a single, extreme incident of significant interference or unreasonable disturbance by a tenant can lead to an end to a tenancy pursuant to paragraph 47(1)(d)(i) of the *Act*, more typically landlords issue written warning letters to tenants giving them a reasonable period of time to address whatever issues are identified by a landlord as potential grounds for ending a tenancy for cause. In this case, no such warning letter was provided to the tenant by the landlord. Even if a warning letter had been provided, I find that the landlord has fallen far short of demonstrating that the tenancy can be ended on the basis of the tenant's significant interference with or unreasonable disturbance of the landlord.

The placement of the property at significant risk would appear to rely on the efforts taken by the tenant to sell the landlord's cathouse on the landlord's behalf, which I have commented on above. This situation has all of the earmarks of a one-time misunderstanding or lack of communication with respect to the landlord's wishes regarding an item the landlord no longer required. The landlord has failed to demonstrate any entitlement to end this tenancy because the landlord's property is at significant risk on the basis of this one-time difference of opinion regarding the method by which the landlord's cathouse would be sold.

For the reasons stated above, I allow the tenant's application. Since the tenant has been successful in this application, I allow the tenant's application to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application is allowed and the 1 Month Notice of November 26, 2018 is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant's application to recover the \$100.00 filing fee is also allowed. As this tenancy is continuing, I order the tenant to withhold \$100.00 from a future monthly rent payment. In the event that this is not possible, I also issue a monetary Order in the amount of \$100.00 in the tenant's favour to be used **only** in the event that withholding that amount from a future monthly rent proves unfeasible. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as

soon as possible in the event that the tenant intends to obtain the recovery of this amount by way of the monetary Order. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 10, 2019

Residential Tenancy Branch