



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, PSF, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Landlord K.B. (the "landlord"), her support person, the tenant and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlords were individually served the notice of dispute resolution packages by registered mail on December 19, 2018. The tenant provided the Canada Post Tracking Numbers to confirm these registered mailings. The landlord confirmed receipt of the dispute resolution packages but did not know on what date. I find that the landlords were deemed served with these packages on December 24, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Evidence

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") state that evidence should be served on the respondent and the Residential Tenancy Branch at least 14 days before the hearing.

Section 3.15 of the *Rules* state that evidence should be served on the applicant and the Residential Tenancy Branch at least seven days before the hearing.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

Both parties uploaded evidence to the Residential Tenancy dispute resolution site within two days of the hearing. I find that the evidence submitted within two days of the hearing is late and will therefore not be considered.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
3. Is the tenant entitled to an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65 of the *Act*?
4. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

Both parties provided testimony during the hearing. In this decision, I will only address the facts and evidence which underpin my findings and will only summarize and speak to the points which are essential in order to determine whether or not the tenancy will continue or end and whether or not the tenant is entitled to receive an Order that the landlord provide services or facilities required by the tenancy agreement or law. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agreed to the following facts. This tenancy began on January 15, 2018 and is currently ongoing. Monthly rent, inclusive of utilities, in the amount of \$750.00 is payable on the first day of each month.

The landlord testified that on December 17, 2018 she posted a One Month Notice to End Tenancy for Cause with an effective date of February 28, 2019 (the "One Month Notice"). The landlord testified that she crossed out the "One" on the One Month Notice and wrote in "Two". The landlord testified that she did this to allow the tenant an extra month in the subject rental property. The tenant confirmed receipt of the One Month Notice on December 17, 2018. The One Month Notice was accepted into evidence. The tenant filed for dispute resolution on December 18, 2018.

The One Month Notice states the following reason for ending the tenancy:

- 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.

In the details of cause section of the One Month Notice, the landlord stated that she served the One Month Notice because she felt stressed over the tenant's constant complaints and was uncomfortable with a healing light operated by the tenant. The landlord also stated that she would like her mother to move into the subject rental property.

At the hearing the landlord testified that another reason she issued the tenant the One Month Notice was because the tenant was illegally growing marijuana at the subject rental property. The landlord testified that the smell of the marijuana plants bothered her. The landlord provided no evidence that the tenant's activities were illegal.

The tenant testified that she did not constantly complain and that prior to the arbitration proceedings, she and the landlord were on friendly terms and they frequently exchanged text messages.

The tenant testified that she grew three marijuana plants for personal use and that this was not illegal.

Both parties agreed to the following facts. After the tenant served the landlord with her application for dispute resolution, the landlord blocked her access to the garage where the garbage, compost and recycling bins are located. The tenancy agreement states that garbage, compost and recycling services are included in the rent.

The tenant testified that since the landlord blocked her access to the garage, she has had to pay to take her garbage to the dump.

The landlord testified that she has not breached the tenancy agreement because the tenant still has access to the garbage, compost and recycling bins when they are on the curb once per week for collection.

Analysis

I find that the One Month Notice was served on the tenant in accordance with section 88 of the *Act*. I find that the action of scratching out the "One" and writing in a "Two" on the Notice to End Tenancy acted to extend the time the tenant was allowed to stay on the subject rental property but did not change the One Month Notice to End Tenancy for Cause to a Two Month Notice to End Tenancy for Landlord's Use of Property. I find that a Two Month Notice to End Tenancy for Landlord's Use of Property was not served on the tenant, I therefore dismiss the tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property.

Illegal Activity

Section 47(1)(e)(ii) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:

- has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The term "illegal activity" includes a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

I find that the landlord provided no proof that growing marijuana plants is illegal. I find that the landlord has not proved that the tenant engaged in any illegal activities. As illegal activity is the basis of the One Month Notice, I find that the One Month Notice is cancelled and of no force or effect.

Services and Facilities

Based on the testimony of both parties, I find that the tenancy agreement states that garbage, compost and recycling services are included in the rent. I find that in blocking the tenants means of access to the garbage, compost and recycling bins, the landlord has breached the tenancy agreement.

I find that only allowing the tenant access to the bins when they are on the curb, which occurs only once per week, is a severe restriction of services which effectively prevents the tenant from gaining the benefit of the services set out in the tenancy agreement.

Pursuant to section 62 of the *Act*, I Order the landlords to immediately, upon receipt of this decision, allow the tenant unrestricted access to the garbage, compost and recycling bins. If the landlords fail to comply with this Order, I find that pursuant to section 65 of the *Act*, the tenant is entitled to a rent reduction for loss of services in the amount of \$100.00 per month.

For clarity, if the landlords do not immediately, upon receipt of this decision, provide unrestricted access to the garbage, compost and recycling bins, the tenant will be entitled to a rental reduction of \$100.00 for the month of February 2019 and every month thereafter that the landlords fail to comply with this Order. If services are restored part way through a month, for example, on March 15, 2019, the tenant is entitled to the \$100.00 rent reduction for that month.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlords.

Conclusion

A Two Month Notice to End Tenancy for Landlord's Use of Property was not served on the tenant, the tenant's application to cancel said notice is therefore dismissed.

Pursuant to section 47 of the *Act*, the One Month Notice is cancelled and of no force or effect.

Pursuant to sections 62 and 65 of the *Act*, the landlords are Ordered to immediately, upon receipt of this decision, provide the tenant with unrestricted access to the garbage, compost and recycling bins. If the landlords fail to comply with this Order, the tenant is entitled to a rent reduction in the amount of \$100.00 per month, effective February 2019, until service is restored.

I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlords, for recovery of the filing fee, pursuant to 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: February 01, 2019

Residential Tenancy Branch