



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANAMEX HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, RP

Introduction

This hearing was convened as a January 11, 2019 (the “Application”). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- an order to cancel a One Month Notice to End Tenancy dated January 7, 2019 (“the One Month Notice”);
- a monetary order for money owed or compensation for damage or loss; and
- an order for regular repairs.

The Tenant, the Tenant's representative E.R., as well as the Landlord's agent S.M. attended the hearing, each provided affirmed testimony.

E.R. testified that the Tenant served the Landlord with the Application package on January 14, 2019 via Canada Post registered mail. E.R. stated that the Tenant served the Landlord with her evidence package on February 1, 2019. S.M. confirmed receipt of both mailings. S.M. testified that the Tenants were served the Landlord's evidence by posting it on the Tenant's door on February 15, 2019. The Tenant confirmed receipt of the Landlord's evidence on the same day.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to sections 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act* (*Act*) requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession

if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending for cause.

The Tenant's request for a monetary order for money owed or compensation for damage or loss, and an order for regular repairs are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated January 7, 2019 pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties agreed to the following terms; the tenancy began on July 1, 2015. Currently, rent in the amount of \$754.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit to the Landlord in the amount of \$350.00.

S.M. stated he served the Tenant with the One Month Notice on January 7, 2019 with an effective vacancy date of February 28, 2019, by positing it on the door of the dispute address. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice are;

Tenant is repeatedly late paying rent;

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; and put the landlord's property at significant risk.

In relation to the repeatedly late payments of rent, S.M. testified that the Landlord served the Tenant with a rent increase which took effect on August 1, 2017 increasing the rent from \$700.00 to \$725.00. Since that date, the Tenant has only been paying \$720.00 to the Landlord. On August 1, 2018 a new rent increase took effect, increasing the rent from \$725.00 to \$754.00. S.M. testified that the Tenant continues to only pay \$720.00 a month. S.M. stated that the Tenant has consistently failed to pay the full amount of rent each month since August 1, 2017. S.M. stated that the amount of unpaid rent currently amounts to \$304.00. The Landlord submitted a copy of both rent increases in support.

In response, the Tenant stated that she received a notice November 2, 2017 advising her that the rent increase took place in August 2017 and that rent in the amount of \$725.00 was due to the Landlord. At that time, a balance of \$20.00 was owed to the Landlord in unpaid rent. The Tenant testified that her rent has always been paid by government subsidies as she is currently receiving disability benefits. The Tenant stated that after receiving the notice regarding the additional rent increase, she made arrangements with the government agencies to have the rent increase covered. The Tenant stated that she has not heard from the Landlord regarding late payments of rent ever since. The Tenant testified that her rent is paid in full each month.

The Landlord has also indicated that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. S.M. testified that he has received several written complaints from occupants in the building regarding the Tenant. S.M. testified that he received several complaints regarding a vehicle fire in the parking lot on September 22, 2017. The Vehicle belonged to the Tenant. S.M. testified that some of the other occupants in the building were concerned for their safety following the fire. The Landlord submitted a copy of the complaint letters in support. Furthermore, S.M. testified that the damaged vehicle remained in the parking lot after the fire, which resulted in the Landlord issuing a caution letter to the Tenant on September 28, 2017 requesting that the Tenant remove the vehicle.

In response, the Tenant indicated that she was a victim to a criminal offence and that she was in no way responsible for the fire to her vehicle. The Tenant has also indicated that the vehicle remained in the parking lot as it was being held as evidence before it was towed away. Both parties agreed that the vehicle is no longer in the parking lot.

S.M. also testified that he received a noise complaint on February 20, 2017 in which another occupant indicated that the Tenant was making noise at all hours of the night. Also, the letter indicated that the Tenant was a drug user and had made threats. The Landlord submitted a copy of the letter in support. In response, the Tenant denied the allegations.

Lastly S.M. stated that he received another complaint on January 19 2019 from another occupant in the building complaining about the Tenant making constant noise after

10:00 pm which consisted of; loud banging constant thumping, moving furniture, constant traffic, and throwing the ball for her dog. The Landlord submitted a copy of the letter in support. In response, the Tenant indicated that she has a personal conflict with the person making the complaint and that there are no merits to their complaint.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to end a tenancy for cause in the circumstances described therein. In this case, the One Month Notice was issued on the bases that the Tenant is repeatedly late paying rent, the 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, and put the landlord's property at significant risk.

The Landlord served the Tenant with a One Month Notice dated on January 7, 2019 with an effective vacancy date of February 28, 2019 by positing it on the door of the dispute address. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the *Act*.

In relation to the Landlord's claim that the Tenant is repeatedly late paying rent, the Landlord has stated that the Tenant has not paid rent in full since the first rent increase on August 1, 2017. The Landlord sent the Tenant a caution letter on November 2, 2017 indicating that rent had not been paid in full since the rent increase took effect on August 1, 2017. At that point the Tenant advised the Government agencies which provide her with rent subsidies about the rent increase. The Tenant stated that her rent is paid in full and that she has not received any further notices about unpaid rent. I find that the Landlord has provided insufficient evidence to demonstrate that rent is late or left unpaid.

The Landlord has also made claims that the 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, and put the landlord's property at significant risk.

I find that Landlord has submitted evidence regarding incidents that took place in February and September 2017. I find that there was insufficient evidence provided by the Landlord to demonstrate that the concerns from September and February 2017 were continuing, nor was there a recent caution letter sent to the Tenant to support a notice being issued on January 7, 2019. I find the letter of complaint received by the

Landlord on January 19, 2019 relates to an incident that took place after the notice was issued, therefore I haven't considered it in my decision.

For these reasons, I cancel the One Month Notice, dated January 7, 2019.

I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated January 7, 2019 is cancelled.

The tenancy will continue until ended in accordance with 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 25, 2019

Residential Tenancy Branch