



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, ERP, OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to end tenancy due to end of employment, for an Order for the Landlord to complete emergency repairs, for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and two agents for the Landlord (the “Landlord”) were present for the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package. The Tenant confirmed receipt of a copy of the Landlord’s evidence. The Tenant did not submit any evidence prior to the hearing. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

At the outset of the hearing the company name of the Landlord was clarified by one of the agents for the Landlord. As the agent had been named as the Landlord on the Application for Dispute Resolution, this was amended on the application to name the company as the Landlord.

The Tenant applied to cancel a notice to end tenancy due to end of employment. However, it was clarified during the hearing that the Tenant intended to apply to dispute a One Month Notice to End Tenancy for Cause. The application was amended to clarify the Tenant's claims.

The Tenant applied for an Order for the Landlord to comply with the *Act, Residential Tenancy Regulation* and/or tenancy agreement. The Tenant clarified that this claim was made regarding his claim for emergency repairs and was not a separate order that he was requesting. As such, the application was amended to remove this claim.

The amendments to the Application for Dispute Resolution were made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to complete emergency repairs?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy started on February 1, 2014 with a previous landlord. Current rent is \$943.00, due on the first day of each month. A security deposit of \$415.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties.

The Landlord testified that they served the Tenant with a One Month Notice on January 19, 2019 by posting the notice on the Tenant's door. The One Month Notice was submitted as evidence and states the following as the reason for ending the tenancy:

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

Further details were provided on the notice as follows:

Noise disturbance occurred on June 8, Dec 20, Dec 21 2018 and January 1 and January 15, 2019 and other dates. June 8, 2018 window glass was broken – police file number (redacted). January 15, 2019 domestic dispute – police file number (redacted)

The Landlord stated that the Tenant has breached the material term of the tenancy agreement regarding conduct. They referenced this term on the tenancy agreement which states the following:

In order to promote the convenience, safety, welfare and comfort of other tenants in the building, the tenants and guests shall not disturb, harass, or annoy occupants of the building or neighbours, and shall not cause loud conversation, music, television, or other irritating noise to disturb peaceful enjoyment at any time. Any tenant who causes other occupants to vacate the premises because of noise, or other disturbance, harassment, or annoyance, shall indemnify the Landlord for any reasonable costs and losses caused thereby, and may have the tenancy terminated on short notice.

The Landlord provided further testimony that the Tenant has caused noise and disturbance to other tenants on the residential property for which they have received many complaints. The Landlord submitted complaint letters from other occupants dated December 24, 2018, January 12, 2019, two letters dated January 15, 2019, February 8, 2019, February 25, 2019 and February 27, 2019. They also submitted two undated complaint letters regarding noise disturbances in January and February 2019.

The Landlord submitted a breach letter dated June 12, 2018 which was sent to the Tenant. The letter addresses an incident that occurred on June 7, 2018 in which the police were called and a window in the Tenant's rental unit was broken. The letter notified the Tenant that this was a breach of a material term of the tenancy agreement and stated that any further breach will result in a One Month Notice.

The Landlord stated that they have also received many verbal complaints and have spoken to the Tenant regarding the concerns about noise as well. The Landlord stated that the incident with the broken window was concerning due to the risk to others with

the broken glass. They also noted that this was not just about the window but was also regarding the noise and disturbance to others.

The Tenant stated that he has not received any written notice from the Landlord other than the June 12, 2018 letter. He stated that he paid to have the window fixed and believed that the issue was resolved. He also noted that he asked his neighbours to tell him if he was being too loud but did not hear anything until he received the One Month Notice.

The Tenant provided further testimony that he believes that some of the other occupants do not like him and are therefore blaming any noise on him. He stated that he has been away at some of the times that the Landlord has received complaints regarding noise and that no one was staying in his rental unit at the time.

The Tenant also applied for an Order for the Landlord to complete emergency repairs. He stated that there was a leak in his bathroom ceiling last summer. When the area around the leak was cut open by a plumber, the Tenant stated that he noticed a significant amount of black mould in the ceiling. He testified that the hole has been covered, but that no steps were taken to address the black mould problem which is noticeable around the light fixture.

The Landlord stated that they dealt with the leak issue in the bathroom of the rental unit and that the hole in the ceiling was fixed once it had dried enough to cover it back up. The Landlord stated that they took reasonable steps to complete the repair and that they are not aware of the presence of any mould.

Analysis

As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. As the notice was posted on the tenant's door on January 19, 2019 and he applied to dispute the notice on January 30, 2019, I find that he applied within the time allowable under the *Act*.

In the absence of any information to confirm when the notice was received, I refer to the deeming provisions of Section 90 of the *Act* which state that a notice posted on the door is deemed received three days after posting. Therefore, the Tenant is deemed to have received the notice on January 22, 2019, and applied 8 days later on January 30, 2019. Therefore, the matter before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice dated January 19, 2019 was served due to claims that the Tenant breached a material term of the tenancy agreement. As such, I refer to *Residential Tenancy Policy Guideline 8: Unconscionable and Material Terms* which states the following regarding material terms:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

The Landlord provided testimony that the clause regarding conduct in the tenancy was a material term. As stated above, the clause referenced noise disturbances and stated that tenants shall not engage in loud conversation, music, television or other behaviours that may disturb other occupants' quiet enjoyment of the property.

However, I do not find that 'conduct' is a material term of the tenancy. As stated in the policy guidelines, a material term is one in which even a trivial breach may end the tenancy. As conduct and noise disturbance is subjective, I find that this does not fit the definition of a material term, as that would mean that any amount of noise or disturbance may be enough to end the tenancy, which I do not find to be reasonable.

Instead, I find that the Landlord's claims against the Tenant seem to be regarding unreasonable or significant disturbance, which is another ground for ending a tenancy under Section 47 of the *Act*. I also note that since breach of a material term and significant disturbance are stated as separate grounds for ending a tenancy under Section 47 of the *Act*, I find this to support my conclusion that the Landlord's claim of disturbance is not a material term of the tenancy agreement.

Accordingly, I find that the Landlord has not met the burden of proof to establish that the Tenant has breached a material term of the tenancy agreement as I am not satisfied that conduct is a material term of the tenancy. Therefore, the Tenant was successful with their application to cancel the One Month Notice. The One Month Notice dated January 19, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Regarding the Tenant's claim for emergency repairs, the parties were not in agreement as to whether there are outstanding repairs in the bathroom of the rental unit. In the absence of any documentary evidence from the Tenant, I find that he did not establish that there is an emergency repair needed in the bathroom.

I also note that Section 33 of the *Act* defines an emergency repair as urgent and necessary for the health or safety of the occupants or the residential property. As I do not have evidence before me that would establish that there is a repair needed in the bathroom of the rental unit and that this repair fits the definition of an emergency as defined under the *Act*, I decline to issue any emergency repair orders. The Tenant's application for an emergency repair order is dismissed, without leave to reapply.

As the Tenant was successful with the application to cancel the One Month Notice, pursuant to Section 72 of the *Act*, I award the Tenant the recovery of the filing fee in the amount of \$100.00. The Tenant may deduct \$100.00 from the next monthly rent payment.

Conclusion

The One Month Notice dated January 19, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenant's application for an emergency repair order is dismissed, without leave to reapply.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from the next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: March 18, 2019

Residential Tenancy Branch