Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, FFT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") dated January 27, 2019, pursuant to section 47;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72;

The tenant, the landlord's agent "KH" (the "landlord"), and the landlord's counsel attended the hearing. The hearing process was explained and parties were given an opportunity to ask any questions about the process. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the Tenant's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), along with her evidence, to the landlord by way personal service via hand. The landlord confirmed receipt of the dispute resolution hearing package and the tenant's evidence. Therefore, I find that the landlord has been served with the notice of dispute resolution package, and the tenant's evidence, in accordance with section 89 of the Act.

The landlord testified that she served her evidence package to the tenant. The tenant confirmed receipt of the landlord's evidence.

I note that Section 55 of the 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 Issue – Scope of Application

I advised the tenant that she has applied for a number of items as part of her application. Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

The Residential Tenancy Branch Rules of Procedure, Rule 2.3 provides me with the discretion to sever unrelated claims:

> **2.3 Related issues**
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the documentary evidence, the tenant's claim, and hearing from the tenant, I determined that the tenant's claim in relation to cancelling the One Month Notice was unrelated to the other issues raised by the tenant. As the One Month Notice is the more pressing matter, I exercised my discretion to dismiss the remainder of the issues identified in the tenant's application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession, pursuant to Section 55 of the Act? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and /or arguments are reproduced here. I refer only to the relevant facts and issues in this decision. The principal aspects of the tenant's claims and my findings are set out below.

The parties agreed that the tenancy began on June 01, 2018. The monthly rent was determined to be due on the first day of each month. The monthly rent was set at $1,700.00 and remains at that amount. The parties agreed that the tenant provided a security deposit in the amount of $850.00 which continues to be held by the landlord. A pet damage deposit was not collected by the landlord. The parties provided as evidence a copy of a written tenancy agreement which confirms the details provided orally by the parties.

The subject rental unit is the upper suite of a single-family detached house. The single-family house includes a separate lower unit, which is not included as part of the tenancy that is the subject of this application.

The landlord issued a One Month Notice, dated January 27, 2019, to the tenant with an effective vacancy date of February 28, 2019. The landlord testified that the One Month Notice was served to the tenant by hand on January 27, 2019. The tenant confirmed that she received the One Month Notice on January 27, 2019.

The landlord's One Month Notice identified the following reason for ending this tenancy for cause:

- *Tenant or a person permitted on the property by the tenant has:*
    - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

In the section of the One Month Notice titled "Details of Cause", the landlord provided that separate pages were included to describe the nature of the purported activities which comprised the significant interference or unreasonable disturbance. The separate pages accompanying the One Month Notice, and the One Month Notice itself, were entered into evidence by the tenant.

One the pages accompanying the One Month Notice, the landlord provided the reasons which detailed the landlord's basis for determining cause to issue the One Month

Notice. The landlord also provided affirmed testimony and written submissions which outlined the landlord's reasons for determining that cause existed to issue a One Month Notice on the basis that the tenant significantly interfered with or unreasonably disturbed the landlord. A summary of the landlord reasons, as provided by way of testimony and evidentiary material, is as follows:

- The tenant is being evicted for continued rudeness and difficult behaviour.
- The tenant has been confrontational and uncooperative since the early stages of the tenancy, which the landlord states amounts to harassment and vindictiveness.
- The tenant made inappropriate and offensive statements during text message communication with the landlord.
- The tenant contacted the municipal bylaw department to complain about snow on sidewalks, which the landlord asserted is baseless and facetious, as the bylaw officer communicated with the landlord and conveyed that the manner in which the sidewalk presented did not qualify as inadequate snow removal on city sidewalks, and did not warrant a complaint.
- The tenant decided to plant grass seed in an effort to grow grass, but did so contrary to the landlord's wishes, as the landlord is a certified golf course superintendent with knowledge of grass maintenance, and wanted to undertake matters relate to lawn maintenance on his own accord and pursuant to his own timelines.

The landlord provided as evidence a chronological history of text message communication with the tenant. The tenant acknowledged that the text message correspondence is authentic and represents an accurate depiction of text message correspondence with the landlord.

Of particular note, according to the landlord, was one instance whereby the tenant sent a rude, inappropriate, and vulgar text message which the landlord described as being substantially more rude and inappropriate than any prior statements made by the tenant, and was well beyond a tolerable limit.

The landlord referred to other text messages which the landlord asserted depicted the tenant's generally rude, uncooperative, and demeaning comments directed toward the landlord.

The tenant provided testimony during which she did not contest the landlord's depiction of the text message communication between the parties. The tenant acknowledged that she had sent text messages which were inappropriate, and which could be categorized as rude, but that she let her frustration "get the better of her".

The tenant testified that she wished to continue living in the rental unit until the end of the fixed-term agreement, which is set to end on May 31, 2019.

Analysis

Section 47 of the Act allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

In accordance with subsection 47(4) of the *Act*, the tenant must file an application for dispute resolution within ten days of receiving the One Month Notice. In this case, the tenant received the One Month Notice on January 27, 2019. The tenant filed her application for dispute resolution on February 01, 2019. Accordingly, the tenant filed within the ten day limit provided for under the Act.

Where a tenant applies to dispute a One Month Notice, or in a matter in which the landlord seeks an Order of Possession, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the One Month Notice to end a tenancy for cause is based. Therefore, in the matter before me, the burden of proof rests with the landlord.

I find that, on a balance of probabilities, the landlord has failed to meet the burden of proof to demonstrate that the tenant has significantly interfered with or unreasonably disturbed the landlord. My reasons for finding so are set out below.

Although the landlord provided testimony and evidence which was reliable, I find that the landlord's evidence was not sufficient to prove that the tenant had undertaken action that would leave it open to the landlord to find that the tenant had significantly interfered with or unreasonably disturbed the landlord.

The allegations of significant interference or unreasonable disturbance alleged by the landlord focus primarily on the behaviour and conduct of the tenant. At issue in this

hearing is whether or not the tenant's conduct in the course of this tenancy has significantly interfered with or unreasonably disturbed the landlord.

Therefore, the issue for me to determine is whether the actions and conduct of the tenant constitutes a *significant* interference and *unreasonable* disturbance.

Section 47 of the *Act* provides, in part, the following:

> **47** (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> > (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,

The Act provides only that the landlord may end a tenancy for cause if the tenant has caused significant interference or an unreasonable disturbance; however, the Act does not provide any guidelines as to what constitutes significant interference or an unreasonable disturbance.

Based on the testimony and evidentiary material provided by the parties, and keeping in mind that the onus is on the landlord to provide evidence to prove otherwise on a balance of probabilities, I find that the action and conduct of the tenant does not constitute significant interference an unreasonable disturbance.

While I am sympathetic to landlord's position that she has been the recipient of rude remarks sent by the tenant by way of text messages—including, on one occasion, a notably vulgar remark sent via text message—the collective remarks do not meet the threshold of constituting conduct which can be categorized as significant interference or an unreasonable disturbance.

In her written submissions, the landlord has noted four instances of what she deems to be degrading remarks, along with one instance of the particularly rude remark referenced in the preceding paragraph. I find that amount to five instances of inappropriate communication since the onset of the tenancy, which the landlord chose to highlight.

Although the collective conduct, behaviour, and rude remarks on the part of the tenant (as described the landlord—and not contested by the tenant) can reasonably be categorized as inappropriate, and can be construed as a disturbance and as an interference, I find that the nature and frequency of the tenant's conduct and behaviour does not rise to the level such that it meets the threshold of being categorized as *significant* or *unreasonable* (my emphasis added) sufficient to end the tenancy.

Based on the foregoing, I find that, on a balance of probabilities, the landlord has not met the burden of proving that the tenant engaged in behaviour that "significantly interfered with or unreasonably disturbed another occupant or the landlord", as set out on the One Month Notice.

As the tenant was successful in this application, I find that the tenant is entitled to recover the $100.00 filing fee paid for this application.

Conclusion

Based on the above, I order the One Month Notice, dated January 27, 2019, is cancelled and is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

I issue a Monetary Order in the tenant's favour in the amount of $100.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: March 14, 2019

Residential Tenancy Branch