



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE

Introduction

This hearing dealt with the tenants' 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. in order to enable them to call into this teleconference hearing scheduled for 11:00 a.m. The tenants and their advocate attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenants, their advocate and I were the only ones who had called into this teleconference.

As the tenants confirmed that they were handed the 1 Month Notice by the landlord on March 16, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the tenants testified that they handed the landlord a copy of the tenants' dispute resolution hearing package on March 27, 2019, I find that the landlord was served with this package in accordance with section 89 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should an order be issued against the landlord with respect to the landlord's right to enter the rental unit?

Background and Evidence

The tenants testified that this tenancy began by way of an oral agreement in or around September 2009. The current monthly rent is set at \$950.00, payable in advance on the first of each month.

The landlord's 1 Month Notice entered into written evidence by the tenants included the following reasons for seeking an end to this tenancy by April 16, 2019:

Tenant has allowed an unreasonable number of occupants in the unit/site

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;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *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.*

Tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site.

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

I note that the corrected effective date of the 1 Month Notice is April 30, 2019.

In their application and at the hearing, the tenants requested the issuance of an order against the landlord requiring the landlord to comply with the provision in the *Act* in which landlords must provide 24 hours of written notice when the landlord needs to enter the rental unit. The tenants said that the landlord frequently enters the rental unit without adequate warning.

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. In this case, the tenants applied to cancel the 1 Month Notice on March 26, 2019, within the ten day period for doing so. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

As the landlord did not attend this hearing and did not provide any written evidence, I allow the tenants' application to cancel the 1 Month Notice.

Section 29 of the *Act* outlines restrictions on a landlord's right to enter a rental unit during a tenancy, which are set out in part as follows:

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;...

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b)...

As the tenants have given undisputed sworn testimony that the landlord is not following the provisions of section 29 of the *Act*, I order the landlord to provide at least 24 hours notice in writing to the tenants on any occasion, other than for an emergency as identified in paragraph 29(1)(f) of the *Act*, when the landlord wishes to enter the tenants' rental unit. I also order the landlord to limit any inspections to a maximum of once per month as per section 29(2) of the *Act*.

In the event that the landlord does not comply with these orders, the tenants are at liberty to apply for a monetary award for the loss of their quiet enjoyment of their rental unit.

Conclusion

The tenants' application to cancel the 1 Month Notice is allowed. The 1 Month Notice is set aside and of no continuing force nor effect. This tenancy continues until ended in accordance with the *Act*.

I order the landlord to provide at least 24 hours notice in writing to the tenants on any occasion, other than for an emergency as identified in paragraph 29(1)(f) of the *Act*, when the landlord wishes to enter the tenants' rental unit.

I order the landlord to limit any inspections to a maximum of once per month.

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: April 30, 2019

Residential Tenancy Branch