



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated February 7, 2019 ("One Month Notice"), and to recover the cost of their filing fee.

The Tenant, P.L., and an agent for the Landlord, D.C., ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses, T.C. (the "Property Manager"), and T.L., for the Landlord were also present and provided affirmed testimony. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I 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.

Neither party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had had time to review it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

At the beginning of the hearing, the Property Manager said that he wanted to speak to me privately, as he said he had confidential evidence regarding the One Month Notice, which involved a police matter. He said he was not at liberty to disclose this information to the Parties. I advised that it would be administratively unfair to hear evidence that could be prejudicial to one of the Parties, if that Party was not able to hear and respond to it. Further, the Tenant has had no notice of this information, which is another breach

of administrative fairness. The Property Manager said that “until I have approval from the police at this point, I am not at liberty to disclose” the details, including the identity of the complainants, “who did not want their names exposed”. The Property Manager said, “this is not something like a barking dog; it is something greater than that and I am not at liberty to say more.”

The Tenant said that she is “in the dark. I’m wondering why they have not contacted me.”

The Agent said that the Property Manager seemed to want to introduce new evidence, but perhaps it would be better to “resolve what’s on the table. If his new direction with the new evidence comes to something, then that will take its natural course by law.”

The Tenant and I agreed with the Agent and we continued with the hearing without the Property Manager speaking with me privately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that this month-to-month tenancy began on July 15, 2016, with a monthly rent of \$1,250.00, which was due on the first of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$625.00 and a pet damage deposit of \$100.00.

The Parties agreed that the Agent served the Tenant with a One Month Notice in person on February 7, 2019, with a vacancy effective date of March 8, 2019. The One Month Notice states that the reasons for the eviction were the following:

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

The 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 hearing, the Agent said that the property management company advised him that “these tenants need to be evicted immediately.” The Agent said that this action was brought by the property management company, via the strata council. The Agent said that he was advised by the strata council that they were going to take legal action against him, unless he evicted the Tenants.

The Agent said that he has no evidence or proof of any of the allegations in the One Month Notice and that the allegations came from the strata council. He said “that’s why I invited [the Property Manager] to join the hearing; he should have multiple pieces of evidence” to support the allegations.

The Agent said: “I have never seen or had any complaints from other tenants or even the strata. For them to jump to this state of eviction seems inappropriate without evidence.”

The Tenant said that she has never been given any written notice about the allegations. “No one from the strata or property management has talked to me about these allegations. I dispute them; they’re not true.”

The Property Manager repeated what he had said before, about the complainants not wanting their names revealed.

The Tenant said she has not been contacted by the police, “so I’m in the dark. I’m wondering why they haven’t contacted me.”

The Landlord submitted a copy of a letter to the Agent dated February 4, 2019, in which the Property Manager said:

Our office has received complaints regarding your tenants in [the rental unit]. Council has directed our office to notify you to take immediate action to address the concerns raised regarding the activities of your tenants. There are concerns that your tenants may be involved in unlawful activity that put the residents at risk and are in violation of the strata property act the bylaws.

The Property Manager goes on to list complaints that have been made about the Tenants having “been seen meeting with visitors of questionable character”. There are also allegations relating to “what appears to be buying and selling of drugs”. These allegations do not identify the complainants or the date and times at which the actions were alleged to have happened.

Analysis

When making complaints about a tenant that involves illegal activity, a landlord has the burden of proving that the tenant or person permitted on the property by the tenant has engaged in illegal activity. Further, other grounds that the Landlord has alleged the Tenants contravened were under section 47(1)(d), including that the Tenants “significantly interfered with” or “unreasonably disturbed” another tenant or the landlord.

It is important to note the use of the words “significantly, unreasonably and seriously” in the subsections 47(1)(d)(i), (ii), and (iii). The Act has used strong wording to ensure that landlords can only end a tenancy if the issues with the tenant are significant, unreasonable and/or serious.

To support their allegations, the Landlord has submitted letters reporting rumours and innuendo, rather than proof of wrongdoing. The Property Manager acknowledged that he preferred to “defer” the hearing until he had more solid evidence. This supports my finding that the Landlord has not provided sufficient evidence to meet the burden of proving that the grounds for ending the tenancy are significant, unreasonable and/or serious or illegal. I find that the Landlord has not established on a balance of probabilities that they had sufficient grounds to evict the Tenants.

On another point, a landlord who serves a One Month Notice must do so in compliance with section 47 of the Act. Section 47 (2) states:

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As noted above, the Agent served the Tenant with the One Month Notice on February 7, 2019, with a vacancy effective date of March 8, 2019. The Parties agreed that the rent was due on the first day of each month. According to section 47 (2) (b), the effective date should have been March 31, 2019, the day before the rent was payable, not

March 8, 2019. However, pursuant to section 53 of the Act, an incorrect effective date is automatically changed to the earliest date that complies with the Act. Accordingly, this was not a fatal error on the One Month Notice, but the vacancy effective date is now March 31, 2019.

Given that the Landlord has not submitted sufficient evidence to support their grounds of issuing the One Month Notice, I find that the Tenants are successful in their Application to cancel the One Month Notice. Since the Tenants are successful in their Application, I award them with recovery of the \$100.00 filing fee.

Conclusion

The Landlord has not provided sufficient evidence to support the grounds they alleged in the One Month Notice, so the Tenants are successful in their Application to cancel the One Month Notice.

I award the Tenants recovery of the \$100.00 filing fee. They are authorized to reduce one rent payment by \$100.00 once in realization of this award.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 04, 2019

Residential Tenancy Branch