



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, OLC, PSF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 28, 2019 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65.

The landlord and her agent and the tenant and her agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had permission to speak on her behalf at this hearing. The tenant confirmed that her agent had permission to speak on her behalf at this hearing. The tenant initially intended to call "witness CT," so the witness was excluded from the outset of the hearing, but the tenant did not recall the witness later in the hearing after I notified her that she had the right to do so. This hearing lasted approximately 58 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

The tenant confirmed receipt of the landlord's 1 Month Notice on February 28, 2019. The landlord confirmed that the notice was personally served to the tenant on the above date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on February 28, 2019.

The tenant confirmed that she wanted to dispute a rent increase. However, she did not apply for this relief in her application. She said that she asked for an order for the landlord to comply but did not provide details about the rent increase. Therefore, the tenant's application for an order for the landlord to comply is dismissed without leave to reapply. The tenant is free to file an application to dispute a rent increase in the future, provided that she selects this relief and provides specific details regarding same so that the landlord has notice.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on December 1, 2014. Monthly rent in the current amount of \$925.00 is payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit. No written tenancy agreement was signed by the parties. The tenant continues to reside in the rental unit.

Both parties agreed that the landlord issued the 1 Month Notice with an effective date of March 31, 2019, for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
 - *put the landlord's property at significant risk;*
- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;*
- *Tenant has not done required repairs of damage to the unit/site;*
- *Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.*

The landlord's agent said that she completed an inspection at the rental unit on January 16, 2019. She claimed that it was unreasonably dirty and it caused health and safety hazards. She said that she sent a letter to the tenant on January 19, 2019, asking her to clean and remove the hazards. She stated that on February 28, 2019, another inspection was done and the tenant had only cleaned the stove top in the rental unit. She maintained that the 1 Month Notice was given to the tenant at that time and that the tenant only obtained support with cleaning

when she received the notice. She explained that a hearing between the parties occurred on April 12, 2019, for an early end to tenancy, which was dismissed by the Arbitrator. A copy of the corrected decision was provided for this hearing and the file number for that hearing appears on the front page of this decision. She said that the tenant was disrespectful towards the landlord's managers of the rental unit, as she laughed in their faces, and that it created a "toxic environment." She maintained that the tenant breached the landlord's account and personal information, which was a *Human Rights Code* violation.

The landlord testified that the rental unit used to be her family home, as her son used to live there. She said that her daughter wanted to move into the rental unit. She stated that the tenant moved a lot of her belongings out into storage but there were still garbage bags about one foot high in the crawl space filled with rocks, as of April 1, 2019. She claimed that the tenant had a "toxic relationship" with the landlord's managers and that the landlord never agreed to provide television and internet services to the tenant.

The tenant's agent testified that the landlord asked for an early end to tenancy after the tenant filed this application to dispute the landlord's 1 Month Notice. She said that the Arbitrator decided at the previous hearing on April 12, 2019, that the landlord had no evidence against the tenant and the landlord's application was dismissed. She stated that the landlord had no basis under section 56 of *Act* to evict the tenant, which has identical wording to section 47 of the *Act* regarding a 1 Month Notice. She said that this application was *res judicata* for that reason and I should make a finding of same. She maintained that the tenant did not cause any extraordinary or regular damages, she was not asked to make any repairs, and there was no proof of any serious jeopardy or significant risk to the landlord's property.

The tenant's agent pointed to a letter from witness CT, which was provided for this hearing, indicating that he was the tenant's housing support worker, he helped the tenant organize her possessions, he did not observe any waste, mice, vermin, silverfish at the rental unit, he made five visits to the rental unit, and the tenant was cooperating with cleaning her unit despite her disability and pain. The tenant provided photographs showing that she was not causing any fire or safety hazards, she provided medical evidence indicating she has difficulty with heavy lifting and cleaning, and indicated that she had an insufficient amount of time from the landlord to clean her rental unit. The tenant's agent maintained that the tenant got rid of her belongings in the garage by disposing and selling them as well as bringing them inside the rental unit.

The tenant testified that she did not receive a written tenancy agreement when she moved in and there were no guarantees of her services and facilities. She said that the landlord implicitly consented to her use of the laundry 24 hours per day and 7 days per week, her parking in the driveway at the rental property, and storage in the garage and laundry rooms over a four-year period. She stated that the landlord previously allowed her to park her scooter in the garage but it was now outside where there was no power outlet and it was not secure. She said that these services and facilities were all removed by the landlord and she wanted them reinstated.

Analysis

I find the tenant's application to cancel the landlord's 1 Month Notice is not *res judicata*, as it has not already been decided by another Arbitrator at the previous hearing for the landlord's application for an early end to tenancy. Sections 56 and 47 have different wording, and section 56 has an urgency element that is not contained in section 47. Therefore, a decision has not been made regarding the 1 Month Notice, despite the fact that it was referenced in the previous decision. Accordingly, I have jurisdiction to hear this matter including the 1 Month Notice.

In accordance with section 47(4) of the *Act*, the tenant must file her application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on February 28, 2019 and filed her application to dispute it on March 7, 2019. Accordingly, I find that the tenant's application was filed within the ten day limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord did not issue the 1 Month Notice for a valid reason. The landlord did not provide any order under the legislation for which the tenant failed to comply. The landlord did not refer to any required repairs of damage that the tenant was obligated to complete. The landlord did not show that the tenant caused any extraordinary damage to the rental unit.

I find that the landlord did not show that the tenant put the landlord's property at significant risk or seriously jeopardized the health, safety or lawful right of another occupant or the landlord. The landlord provided only two photographs, one of the tenant's belongings and another of the parking at the rental property. The landlord provided a number of letters to the tenant regarding inspecting the rental unit, the lack of cleanliness of the unit, and her version of events. However, the tenant provided photographs of the unit showing that she organized her belongings, she was working to clean it up, and she was getting assistance from a housing support worker, witness CT. I find that the landlord failed to show that the tenant was causing a health and safety hazard. I also find that the "toxic relationship" between the tenant, landlord's manager and the landlord is not a reason for cause noted above, to end this tenancy.

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated February 28, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

I order the landlord to allow the tenant access to the laundry at the rental property from 9:00 a.m. to 9:00 p.m. on Mondays, Wednesdays, Thursdays and Fridays. Both parties agreed to this during the hearing.

The landlord agreed to allow the tenant access to the backyard of the rental property, as she has a table and chair set up there. The landlord confirmed that there is a power outlet for the tenant to recharge her scooter outside.

The landlord agreed to allow the tenant access to unload her groceries and heavy items in the driveway of the rental unit, since the tenant is disabled, provided that the tenant notifies the landlord that she requires the access when necessary. I find that the tenant is not entitled to guaranteed parking in the driveway as this was not part of any written tenancy agreement. The tenant can continue to park on the street, which she does free of charge.

I find that the tenant is not entitled to any guaranteed storage in the garage and laundry room of the rental unit as the landlord disagreed to this and this was not part of any written tenancy agreement between the parties.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated February 28, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

I order the landlord to allow the tenant access to the laundry at the rental property from 9:00 a.m. to 9:00 p.m. on Mondays, Wednesdays, Thursdays and Fridays.

I order the landlord to allow the tenant access to the backyard of the rental property.

I order that the tenant is entitled to park and recharge her scooter outside at the rental property.

I order the landlord to allow the tenant access to unload her groceries and heavy items in the driveway of the rental unit, since the tenant is disabled, provided that the tenant notifies the landlord that she requires the access when necessary.

The remainder of the tenant's application is dismissed without leave to reapply.

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 29, 2019

Residential Tenancy Branch