



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ApartmentsRus
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

Should the 1 Month Notice be upheld or cancelled?

Background and Evidence

The tenancy started on March 1, 2007 and the tenant is currently required to pay rent of \$1,279.00 or \$1,280.00 on the first day of every month. The tenant occupies the rental unit with her teenaged daughter. The rental unit is an apartment in a multiple unit building occupied by other tenants and managed by the landlord.

On March 31, 2019 the landlord issued the 1 Month Notice to the tenant and gave it to the tenant's 14 year old daughter that evening. The tenant confirmed that her daughter gave her the 1 Month Notice after she read it. The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

In preparing the 1 Month Notice the landlord ticked boxes that correspond to six reasons for ending a tenancy under section 47 of the Act; however, the landlord left the "Details of Cause" section blank. I confirmed that the landlord did not attach another page to the 1 Month Notice to provide the details of cause to the tenant.

In filing her application, the tenant provided submissions concerning the events of March 31, 2019 involving an interaction between the landlord and her guest who had attached his bicycle to the sign post on the exterior of the building. However, in providing evidence for this dispute, the landlord pointed to various issues over the past few years including noise complaints against the tenant in previous years, an assault involving one of the tenant's guests in February 2019, and an interaction between the landlord and the tenant's guest who had attached his bicycle to the sign post located on the front lawn on March 31, 2019.

In receiving the tenant assumed it was because of the interaction between the landlord and her guest that same day but was unaware the landlord was trying to evict her for other issues until she received the landlord's evidence that was sent to her in the mail April 30, 2019.

With respect to the interaction with the tenant's guest on March 31, 2019 the landlord described how a man yelled down from the tenant's balcony as she was going through the saddlebags of the bicycle. The landlord stated the man said he would come down there to talk to her and she found his demeanor rude and threatening and left before he came down. I found this description insufficient to warrant an eviction.

During the hearing, I orally provided my decision to cancel the 1 Month Notice because: (1) it was improperly served to a person who is not an adult; and, (2) even if the Notice were to be deemed sufficiently served, the 1 Month Notice did not provide the "Details of Cause" and it was apparent the tenant was unaware of all of the reasons the landlord seeks to end the tenancy; and, (3) the events of March 31, 2019 did not warrant an eviction.

Since I cancelled the 1 Month Notice and the tenancy is continuing at this time, I explored ways to avoid future conflict between the parties, in particular bicycle parking and unreasonable disturbance of other tenants or the landlord.

With respect to bicycle parking, the landlord indicated there is space in the back of the building for guests to park their bicycles. The tenant was of the view the bicycle parking was full and was unaware of the space the landlord was referring to. I informed the parties that I was ordering the landlord to show the tenant where her guests may park their bicycles on the property. Neither party objected to this order and the landlord indicated she would comply with this order.

The tenant acknowledged that she has received two noise complaints, one in 2015 and one in 2017, and that there was an assault involving her guest early in the morning hours in February 2019 that involved the police attending the property. I informed the parties that I would issue a warning to the tenant that she is responsible for the conduct of the persons she permits on the property, including: herself, her daughter, and her guests and that she is responsible for ensuring she, her occupant, or her guests do not unreasonably disturb other occupants or the landlord of the residential property. Neither party objected to my caution to the tenant. The landlord appeared satisfied with this approach and confirmed she would like to see it in writing.

Analysis

Where a landlord seeks to end a tenancy, the landlord must serve a Notice to End Tenancy to the tenant. Section 88 provides for all of the permissible ways to serve a document, including a Notice to End Tenancy. Section 88 permits a landlord to give a document to an adult who apparently resides with the tenant. An adult is considered anyone who has reached the age of majority, or 19 years old. In this case, the landlord gave the subject Notice to End Tenancy to the tenant's 14 year old daughter. As such, I find the 1 Month Notice was not properly served.

Where a document is not given in a manner that complies with section 88, an Arbitrator may deem the party sufficiently served under section 71 of the Act. Since the tenant confirmed that she received the 1 Month Notice from her daughter and the tenant filed to dispute the 1 Month Notice it may be considered appropriate to deem the 1 Month Notice sufficiently served since the tenant was not prejudiced by the improper service. However, I decline to uphold the 1 Month Notice in any event because the 1 Month Notice was not sufficiently complete, for the reasons that follow.

Section 52 of the Act provides for the form and content of notices to end tenancy. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a landlord and include the reason(s) for ending the tenancy.

The Director has the authority to approve forms pursuant to section 10 of the Act, which provides:

Director may approve forms

10 (1) The director may approve forms for the purposes of this Act.

(2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

The 1 Month Notice to End Tenancy for Cause that is in the approved form provides a section entitled Details of Cause. In this section, the form states: *Include any dates, times, people or other information that says who, what, where or when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).*

The 1 Month Notice that is the subject of this proceeding was in the approved form but I find that it was not sufficiently completed given the lack of “details of cause”. In keeping with the principles of natural justice, a person receiving an eviction notice is entitled to know the reason(s) for its issuance so that they may adequately respond or prepare a defence. In this case, I find that the landlords’ failure to complete the Details of Cause section of the approved form, or attach the details on an attached page, is prejudicial to the tenant as seen by the tenant’s attempts to respond to just one issue when the landlord had identified multiple issues in presenting evidence for this case.

Finally, the one issue the tenant was prepared to respond to was described by the landlord during the hearing and I find that a person yelling down to her while she was going through the saddlebags on his bicycle as being rude is not a basis for ending the tenancy. Nor, do I find there to be sufficient evidence there was a serious threat. Rather, I am of the view that pointing out the bicycle parking for the tenant’s guests will sufficiently rectify such a dispute in the future.

In light of the above, I grant the tenant’s request for cancellation of the 1 Month Notice to End Tenancy for Cause dated March 31, 2019 and the tenancy continues at this time.

Since the tenancy continues at this time, with a view to help the parties avoid a dispute in the future and in keeping with the authority afforded me under section 62 of the Act:

- 1. I order the landlord to show the tenant where bicycles are to be parked, including bicycles of guests visiting the tenant.**

- 2. I order the tenant to ensure the actions of herself, her occupant, or her guests do not unreasonably disturb other occupants or the landlord of the residential property.**

The tenant is now considered duly cautioned and fully aware that unreasonably disturbance by her, her occupant and/or her guests in the future is a basis for ending her tenancy.

I am of the view this dispute is attributable to both parties and I order the parties to share the cost of the filing fee equally. Since the tenant paid \$100.00 for the filing fee, I award the tenant recovery of \$50.00 from the landlord and I authorize the tenant to deduct \$50.00 from a subsequent month's rent to satisfy this award. When the tenant deducts \$50.00 from a subsequent month's rent, as authorized by way of this decision, the landlord must consider the rent paid in full.

Conclusion

The 1 Month Notice dated March 31, 2019 is cancelled and the tenancy continues at this time.

The tenant is authorized to deduct \$50.00 from a subsequent month's rent to recover one-half of the filing fee.

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: May 17, 2019

Residential Tenancy Branch