



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN MENTAL HEALTH
ASS. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, OLC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for monetary compensation, and for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement.

Three agents were present for the Landlord (the “Landlord”), as was the Tenant and the Tenant’s daughter. The parties were affirmed to be truthful in their testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and the Tenant confirmed receipt of a copy of the Landlord’s evidence. The Landlord did not receive a copy of any evidence from the Tenant, but it was confirmed that the Tenant submitted the One Month Notice into evidence and that no further documentary evidence was submitted.

Preliminary Matters

As stated by rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, claims on an application must be related to each other and unrelated claims may be dismissed. Due to the urgent nature of a dispute over a One Month Notice, this decision will address the Tenant’s application to dispute the notice. I exercise my discretion to dismiss the remainder of the Tenant’s claims, with leave to reapply.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord stated that the tenancy began on July 15, 2014 while the Tenant stated that the tenancy began on July 15, 2015. The Tenant stated that monthly rent is \$276.00, due on the first day of each month. The Landlord initially stated monthly rent as \$358.00 but agreed that the Tenant may have stated the correct monthly amount. The Tenant stated that a security deposit of \$375.00 was paid at the outset of the tenancy. The Landlord did not have the security deposit information in front of them but agreed that this was likely correct.

The Landlord testified that they served the Tenant with a One Month Notice on March 29, 2019 by posting the notice on the Tenant's door. The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Put the Landlord's property at significant risk

The effective end of tenancy date of the One Month Notice was stated as May 1, 2019.

The Landlord testified that in a previous hearing regarding a dispute over a One Month Notice, the parties came to a settlement agreement. As part of this settlement agreement, the Tenant agreed that her daughter would not enter the rental unit or be on the residential property.

The decision from this hearing, dated December 22, 2016 was submitted as evidence by the Landlord. As one of the terms of the settlement agreement, the following was recorded in this decision:

The Tenants will not allow the parties named on the front of this decision (who have the initials "E.W" and "T.W") to be in the rental unit or on any portion of the residential property.

The settlement agreement further outlines the term that the parties agree that the tenancy will end by mutual agreement if the terms of the settlement agreement are not upheld.

The Landlord also submitted a letter to the Tenant dated February 21, 2018. The letter states in part the following:

This letter is in response to your recent request for [the landlord] to allow your daughter [name] back on to the premises at [name of residential property]. We are sorry to inform you that due to the numerous complaints we received in the past regarding the behaviour of [names]. We are not willing to grant your request. There were just too many phone calls and letters of complaint from upset tenants and we are not willing to risk this happening again.

(Reproduced as written with identifying information redacted)

The Landlord stated that they became aware that the Tenant's daughter was residing in the rental unit as of April 23, 2019 after receipt of a court order of the same date. The Landlords stated that the court documents order the daughter to reside with the Tenant. The court order was submitted as evidence.

The Landlord stated their belief that the Tenant's daughter is causing disturbance to others as well as risk to the property, all of which were reasons that led to the initial One Month Notice and settlement agreement from December 2016. They submitted photos of small plastic bags that they stated appear to contain drugs, as well as photos of what they stated were needles and a sharps container. They testified that these photos were taken in the Tenant's second bedroom where her daughter resides.

The Landlord stated that they have exhausted all avenues to resolve this issue and are concerned about peace and safety on the residential property with the presence of the Tenant's daughter, due to significant issues that arose in the past.

The Tenant agreed that they reached a settlement agreement in December 2016 and that as part of that agreement her daughter was not allowed on the residential property.

The Tenant stated that her daughter had not been on the property for over two years. However, she testified that her daughter has resided in the rental unit since April 23, 2019 and needs to remain there to help her pack and move. She stated that she agreed at the time that her daughter could not be on the property but that circumstances have changed, and she needs her daughter's help. The Tenant's daughter stated that she has been at the rental unit to help her mother but is not staying there full time.

The Tenant's daughter stated that she has attempted to approach the Landlord to discuss amending the settlement agreement, but that her requests to discuss this have been denied.

The Tenant stated that there have been allegations that her daughter was selling drugs on the property. In response to the photos submitted by the Landlord, the Tenant's daughter stated that she found the small plastic bags outside and had brought them inside to dispose of them. She noted that she is currently attending treatment and is not using drugs.

The Tenant did not dispute that there were significant issues in the past that led to the settlement agreement which included a term that her daughter was not on the property.

The parties discussed settlement but were not able to reach an agreement.

Analysis

The Tenant received a One Month Notice pursuant to Sections 47(1)(d)(i) and 47(1)(d)(iii) of the *Act*. As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice.

The One Month Notice was posted on the Tenant's door on March 29, 2019 and the Tenant filed an Application for Dispute Resolution on April 5, 2019. Therefore, I find that the Tenant applied within the time allowable under the *Act*. As such, the matter before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The Landlord submitted evidence of a previous decision in which the parties came to a settlement agreement and agreed that the Tenant's daughter would not be on the residential property. The Tenant agreed that this settlement was reached in 2016 and confirmed her understanding of the terms of the agreement.

I accept the evidence and testimony of the Landlord that indicates that this agreement was reached due to the behaviour and actions of the Tenant's daughter that was disturbing other occupants of the building. I also note that the Tenant did not dispute that these issues were present in the past and led to the settlement agreement.

The Landlord's letter to the Tenant dated February 21, 2018 indicates that they continue to have concerns about disturbance to others and were therefore not willing to amend the settlement agreement and allow the Tenant's daughter on the property.

Regardless of whether she is living at the rental unit full time or not, the Tenant did not disagree that her daughter has been present on the residential property and in the Tenant's rental unit.

The Landlord submitted sufficient evidence to establish that there were reasons for the daughter's restriction in the rental unit and on the residential property and I have no evidence before me that those issues have been resolved and the daughter was provided permission to be on the property.

Although I do not find evidence that the Tenant or Tenant's daughter are putting the Landlord's property at risk, I am satisfied that the Tenant has unreasonably disturbed the Landlord or other occupants. I accept the testimony and evidence that establishes that this disturbance has been caused by the Tenant through allowing her daughter on the property against a previous settlement agreement which was agreed upon due to past behavioural concerns.

Therefore, as I find the Landlord's had cause to serve the Tenant with the One Month Notice pursuant to Section 47(1)(d)(i) of the *Act*, the Tenant's application to cancel the notice is dismissed, without leave to reapply. Upon review of the One Month Notice, I find it to comply with the form and content requirements of Section 52 of the *Act*.

I note that the Landlord has used an outdated One Month Notice and should use the current version in the future to ensure the notice is not missing any crucial information.

However, I do find that this notice contains the required information and as stated, is in compliance with Section 52.

Pursuant to Section 55(1) of the *Act*, I find that the Landlord is entitled to an Order of Possession.

Although the One Month Notice stated May 1, 2019 as the end of tenancy date, I find this date to automatically correct to May 31, 2019 pursuant to Section 53 of the *Act*. In accordance with Section 90 of the *Act*, a notice posted on the door is deemed served three days later, which in the absence of information to confirm actual receipt date, would make the notice served on March 29, 2019 deemed received by the Tenant on April 1, 2019. As such, the effective date of the notice would be one full rental month later, on May 31, 2019.

Therefore, I award the Landlord an Order of Possession effective on the corrected end of tenancy date of the One Month Notice; May 31, 2019 at 1:00 pm.

Conclusion

The Tenant's application to cancel the One Month Notice is dismissed, without leave to reapply.

Pursuant to Section 55(1) of the *Act*, I grant an Order of Possession to the Landlord effective **on May 31, 2019 at 1:00 pm**. This Order must be served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 24, 2019

Residential Tenancy Branch