



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KRAUSE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MT RP

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for May 13, 2019. The hearing was adjourned as the Arbitrator presiding over the May 13, 2019 hearing had doubts as to whether the tenant had the necessary capacity to understand and participate in this hearing. The Arbitrator made an order that the hearing be adjourned in order for RV, the tenant's mental health worker, or a designate, to attend the hearing with the tenant. Allowing the adjournment was necessary for both parties to be given a fair opportunity to be heard.

The tenant attended the hearing, along with two mental health workers, RV and AN, and the housing manager TW. The landlord was represented by EG ("landlord") in this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

This hearing dealt with the tenant's 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 to the landlord to make repairs to the rental unit pursuant to section 33; and
- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The landlord gave undisputed sworn testimony that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) dated March 20, 2019, with an effective date of April 30, 2019, was personally served to the tenant on March 20, 2019. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue—Tenant’s Application for an Extension of Time to File His Application for Dispute Resolution

The tenant filed his application for dispute on April 4, 2019, although the 1 Month Notice was served to him on March 20, 2019. The tenant has the right to dispute the Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. The 1 Month Notice was confirmed to have been received by the tenant on March 20, 2019, and he had filed for dispute resolution on April 5, 2019, sixteen days later. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. In this case, it is undisputed that the tenant has been diagnosed with mental illness, and this has an impact on his daily life. The tenant is assisted by several workers, and may not have the comprehension level or capacity to understand a situation or documents on his own.

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as “*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure*”.

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that there is a compelling and exceptional reason for why the tenant had filed his application late. I find that the tenant’s ability to file an application on his own, or understand the significance of a 1 Month Notice to End Tenancy for Cause, is limited, and due to these circumstances there was a delay in the filing of the

application for dispute resolution. Under these circumstances, I am allowing the tenant's application for more time to make his application.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order to the landlord to make repairs to the rental unit?

Background and Evidence

This month-to-month tenancy began on October 1, 2015, with monthly rent currently set at \$915.00 per month, payable on the first of each month. The tenant paid a security deposit in the amount of \$350.00, which is currently held by the landlord. The tenant continues to reside at the residence, and is disputing the 1 Month Notice for Cause issued to him on March 20, 2019.

The landlord issued the notice to end tenancy providing two grounds:

1. the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
2. the tenant has not done required repairs to the damage to the rental unit or site.

The landlord's agent testified that the tenant had an inability to keep his rental unit in reasonably clean and uncluttered condition. The landlord's agent expressed concern over the amount of items in the tenant's rental unit, and the threat to the personal safety of the tenant and other occupants in the building. The landlord's agent believes that the condition of the rental unit poses a serious fire hazard, and although the tenant had been given several opportunities to address the situation, the tenant has failed to do so. The landlord provided several warning letters in their evidentiary package to support that notice was given to the tenant. The landlord is also concerned about the smell from the unit, and the deterioration of the rental unit due to the tenant's inability to maintain it.

The landlord submitted that the tenancy must end as the rental unit is "unsafe, uncleaned and smelly". The landlord also expressed concern that the tenant's security deposit may not be sufficient to cover the potential damage to the rental unit when the tenant eventually vacates.

The tenant is disputing the landlord's 1 Month Notice as he submits that the landlord does not have grounds to end the tenancy on the basis of the reasons indicated on the 1 Month Notice.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Although the tenant did file his application late, the tenant's application for more time to file his application was allowed. As the tenant disputed the 1 Month Notice served to him, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered the evidence and testimony before me, and although I find that the landlord's evidence does support the tenant's inability to keep the rental unit in reasonably clean and uncluttered condition, I am not satisfied that the landlord has met the burden of proof to show that tenant has caused extraordinary damage to the rental unit. On the same note, in the absence of sufficient evidence to show that there is significant damage to the rental unit, I am not satisfied that the tenant has failed to repair this respective damage. Although section 46 of the *Act* does allow the landlord to end the tenancy on other grounds such as jeopardizing the health or safety or lawful right of others, or failing to comply with a material term of the tenancy agreement, these were not the grounds indicated on the 1 Month Notice served to the tenant. I find that the evidence and testimony provided in this hearing do not sufficiently support that the tenancy should end on grounds provided on the 1 Month Notice.

Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice dated March 20, 2019, and this tenancy is to continue until ended in accordance with the *Act*.

The tenant also made an application for the landlord to perform repairs to the rental unit. I am not satisfied that the tenant's evidence supports that the landlord has failed to perform repairs as required by the *Act*. Accordingly, I dismiss this portion of the tenant's application with leave to reapply.

Conclusion

The tenant's application for more time to file his application was allowed.

I allow the tenant's application to cancel the landlord's 1 Month Notice for Cause. The 1 Month Notice of March 20, 2019 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant's application for the landlord to perform repairs is dismissed with 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: May 24, 2019

Residential Tenancy Branch