



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT OLC

Introduction

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 requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and 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.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with sections 88 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties acknowledged receipt of each other's evidence, I find that both parties were duly served with each other's evidence in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 1 Month Notice on February 5 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

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 requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on December 13, 2015. Monthly rent is currently set at \$1,000.00, payable on the first of the month. The landlord collected, and still holds, a security deposit in the amount of \$350.00. The tenant currently still resides in the suite.

The landlord served the notice to end tenancy dated February 5, 2019, providing the following grounds:

1. The tenant is repeatedly late paying rent;
2. Tenant has allowed an unreasonable number of occupants in the unit/site;
3. The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
4. The tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property.

The landlord provided the following submissions in the hearing about why the 1 Month Notice was issued. The landlord testified that the tenant is an immigration consultant, and allows her clients to stay at the rental unit with her. The landlord testified that there are often 8 to 10 people in the basement rental unit at a time, and they reside there until they find their own places to live.

The landlord testified that the tenant and occupants are loud, and disturb the landlord and neighbours in the early mornings, and late at night. The landlord testified that the tenant is also repeated late in paying her rent.

The landlord testified that the tenant walks on the lawn, and throws her waste outside. The landlord testified that the tenant has destroyed the lawn, and has created an environmental hazard. The landlord testified that they had attempted to address these issues, and each time the tenant has offered to accept increases in her rent in order to stay.

The tenant disputes the landlord's claims, although she does admit to running a licensed and legal business. The tenant testified that only 3 people live in the rental unit, and the reason that the landlord wants to end the tenancy is to increase the rent. The tenant also disputes that the garbage is hers, and that it belongs to the landlord. The tenant testified that there is an exhaust fan that has been there at least 3 years.

The tenant testified that she has had difficulty accessing the walkway due to overgrown bushes.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

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. The tenant filed his application on February 14, 2019, 9 days after receiving the 1 Month Notice. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

The first reason cited by the landlord is repeated late rent payments. Although the landlord makes reference to repeated late rent payments, I find that the landlord has not provided sufficient evidence to support this.

The second reason cited by the landlord is that the tenant has allowed an unreasonable number of occupants in the rental suite. The landlord testified that the tenant runs a business which involves the tenant providing accommodation to clients. The tenant disputes this, and testified that there are only 3 occupants in the rental unit. Although it was not disputed that the tenant does indeed operate a business as testified to by the landlord, I am not satisfied that the landlord has provided sufficient evidence to support that that the tenant's business includes the provision of accommodation in the rental unit, or that the tenant has allowed an unreasonable number of occupants in the rental suite.

The landlord also indicated illegal activity as a reason for wanting to end this tenancy. The term "illegal activity" would include a serious violation of federal, provincial or

municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants. I have considered the evidentiary materials and testimony provided by the landlord, and I find insufficient evidence of any illegal activity by the tenant the warrants the termination of this tenancy.

The landlord also testified that they had received several complaints about the behaviour of the tenant from neighbours, and included two statements in the landlord's evidentiary materials. The landlord testified to the fact that the tenant and other occupants were loud early in the morning and late at night. The landlord also expressed concern about how the tenant would damage the grass by walking on it, and how the tenant would leave garbage on the property. Although I find that behaviour of the tenant or other occupants may be a nuisance or disturbing to the landlord, I am not satisfied that the landlord has provided sufficient evidence to support that the aforementioned behaviour is of a serious enough nature to justify the end of the tenancy.

I find that the landlord has not justified ending this tenancy on the grounds provided on the 1 Month Notice, and accordingly I allow the tenant's application to cancel the 1 Month Notice dated February 15, 2019. This tenancy is to continue until ended in accordance with the *Act*.

I am not satisfied that the landlord has breached any term of the tenancy agreement or the *Act*, and accordingly I dismiss the tenant's application for the landlord to comply with the *Act*.

I find that the tenant is entitled to recover the filing fee for this application.

Conclusion

The landlord's 1 Month Notice to End the Tenancy dated February 5, 2019 is cancelled and of no continuing force, with the effect that this tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remaining portion 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: May 1, 2019

Residential Tenancy Branch