



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, PSF, AAT, RR, OLC

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an Order to Allow Access for the Tenant or their guests, pursuant to sections 30 and 70.

The tenant, the landlords, the landlord's agent and the landlord's witness 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 tenant testified that she served the landlords with her application for dispute resolution via registered mail on March 21, 2019. The landlords confirmed receipt of the tenant's application for dispute resolution but could not recall on what date. I find that the landlords were served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

Preliminary Issue- Evidence

Both parties agreed that the landlords did not serve the tenant with their evidence, but instead provided the tenant with five pictures of computer screens showing what evidence the landlords uploaded to the Residential Tenancy Branch website.

Section 3.15 of the *Residential Tenancy Branch Rules of Procedure* (the “Rules”) states that the Respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find that since the tenant did not receive the landlord’s evidence package, all evidence submitted by the landlord, is not admitted into evidence.

The tenant testified that she sent her evidence package to the landlord via registered mail on April 10, 2019. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The landlords testified that they did not receive a pick-up slip from Canada Post and they have been checking the mail regularly.

Section 3.14 of the *Rules* states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the landlord did not receive the tenant’s evidence package, all evidence submitted by the tenant, is not admitted into evidence.

Preliminary Issue- Amendment

The tenant testified that she filed an amendment to her application on April 1, 2019, adding the notation “basement” to the address of the subject rental property. The tenant testified that the amendment was served on the landlords via registered mail in the same package as her evidence. As the landlords testified that they did not receive the evidence package, I find that the amendment was not served on the landlords in accordance with section 88 of the *Act*.

Section 4.2 of the *Rules* states that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the tenant lives in the basement suite of the subject rental property was known to both parties, and the correction should have been

reasonably anticipated by the landlords. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the tenant's application to include the notation basement in the address of the subject rental property.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy.

Issue to be Decided

1. Is the landlord entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on December 1, 2018 and is currently ongoing. Monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant to the landlord.

Both parties agree that on February 28, 2019 the tenant was personally served with a One Month Notice to End Tenancy for Cause with an effective date of April 30, 2019 (the "One Month Notice").

The One Month Notice states the following 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;
 - 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 engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - Jeopardize a lawful right or interest of another occupant or the landlord.

Incidents that occurred after the tenant was served with the One Month Notice are not reproduced in this decision because only events leading up to the issuance of the One Month Notice can be used to determine if the One Month Notice is valid.

The landlords testified to the following facts. The landlords live in the main portion of the house and the tenant lives in the lower suite. The tenant has many different visitors to the subject rental property who attend at various hours of the day and night. Most of the visitors are male. The landlords are senior citizens and get scared by all of the different faces that come and go from the subject rental property. It is okay for the tenant to have friends over, but not late at night.

I asked the landlords what illegal activity they believe the tenant has engaged in. The landlords testified that they do not know what is going on in the house but there are a lot of men coming to the subject rental property late at night. The landlords insinuated that the tenant was engaging in prostitution.

The tenant testified that she is not engaging in prostitution and that she has many friends who come and visit and that it is not the landlord's business who her friends are or who she dates. The tenant testified that her guests do not bother the landlords and are not the landlord's concern.

The landlords testified that the tenant has called the police on another tenant who lives with the landlords on numerous occasions and the constant police presence is embarrassing.

The tenant testified that she has called the police on a number of occasions because the tenant who lives with the landlord routinely verbally assaults her.

The landlords testified that the tenant plays loud music. I asked the landlord to elaborate on this statement by providing dates and times of such instances. The landlord testified that on one occasion the tenant had loud music playing at 3 a.m. and that the tenant "quite often" plays loud music. No dates were provided.

The tenant testified that she usually goes to bed between 9 p.m. and 10 p.m. and rarely stays up late playing music. The tenant acknowledged that on one occasion she did have music on at 3 a.m. but this was not usual or an everyday occurrence.

The tenant testified that prior to receiving the One Month Notice, she did not receive any written warnings from the landlords. This fact was not disputed by the landlords.

The landlords testified that the tenant has put their property at significant risk by cooking inside without a kitchen and by using a washing machine that the landlords did not install or approve. No further explanation about the risk caused by cooking was provided. The landlords testified that the floors in the subject rental property are hardwood and it is possible that the tenant's washing machine could damage them. The landlords testified that they did not know if the flooring was damaged.

The tenant testified that she does not use her portable washing machine to wash her clothes because the portable washing machine requires a kitchen sink to attach to and the subject rental property does not have a kitchen sink. The tenant testified that the sink in the bathroom leaks and she has used towels to soak up the leaking water and has used her washing machine to spin out the excess water and this was drained into the bathtub. The tenant denied the floor was put at risk. The tenant testified that she does her laundry at her mother's house and dries it on drying racks at the subject rental property.

At the end of the hearing the landlord called their witness. Witness D.B. testified that she lives with the landlords and has called the police on the tenant on two occasions. Witness D.B. testified that the tenant attacked her with a baseball bat. Later in the

witness's testimony she testified that the tenant did not actually strike her with the baseball bat.

The tenant testified that she was packing up her car for her son's birthday outing and that as she was about to put a baseball glove and bat into her car the witness threw bread on the ground by the tenant's car. The tenant picked up the bread and approached the witness and asked her not to throw bread, she was holding a baseball bat, but this was a coincidence and she was not threatening the witness with it. The tenant testified that the police investigated and found that she was not the aggressor.

The witness testified that on one occasion she was leaving the landlord's suite and the tenant flashed a buck knife at her. The tenant denied that this occurred.

The tenant testified that the witness is frequently verbally abusive, and she has had to call the police on the witness on several occasions.

Analysis

Pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, where a tenant disputes a one month notice to end a tenancy for cause given by a landlord, the onus is on the landlord to prove that the tenant has breached section 47 of the *Act*.

Section 47(1)(d)(i) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 30 of the *Act* states that a landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

Pursuant to section 30 of the *Act*, I find that the tenant is permitted to have guests at the subject rental property and it is not the landlord's concern as to where on the gender spectrum those guests fall. Who the tenant invites into the subject rental property is not the concern of the landlord as long as the *Act* is not being breached. I find that the tenant has not significantly interfered with or unreasonably disturbed another occupant or the landlord by having frequent and or male visitors.

I find that while having the police attend at the subject rental property may be embarrassing, calling the police to safely deal with a dispute is not an unreasonable disturbance.

Section 47(1)(d)(ii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

In this case, the testimony of the witness and the tenant are discordant. I find that the landlord has not proved, on a balance of probabilities, that the witness's version of events is more likely to have occurred than the tenant's version of events. I therefore find that the landlord has not met the burden of proof and the landlord's claims based on the witness's evidence fails.

I find that the landlords have failed to prove the tenant's visitors have seriously jeopardized the health safety or lawful interest of another occupant or the landlord. The landlords testified that all the new faces made them feel at risk but have provided no evidence to substantiate their fear. The landlords did not testify that any negative events occurred as a result of the tenant's guests.

Section 47(1)(d)(iii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

I find that the landlords have not proved, on a balance of probabilities, that the tenant's portable washing machine poses a significant risk to the subject rental property. The

landlord submitted no evidence to suggest that the portable washing machine was leaking or at risk of leaking.

I find that the landlord has not proved, on a balance of probabilities, that cooking in the subject rental property has put the landlord's property at significant risk.

Sections 47(1)(e)(i), 47(1)(e)(ii), and 47(1)(e)(iii) state that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:

- has caused or is likely to cause damage to the landlord's property,
- has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The term "illegal activity" includes 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.

The landlords gave insufficient evidence of illegal activity at all. I find that the landlords have not proved that the tenant engaged in any illegal activities.

Based on the above, I find that the landlord has not proved that the tenant breached any portion of section 47 of the Act. Therefore, I find the One Month Notice to be cancelled and of no force or effect.

As the tenant was successful in her application I find that she is entitled to recover the \$100.00 filing fee from the landlords.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlords. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlords.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlords.

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