



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, FFT

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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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.

As the tenant confirmed that they received the landlord's 1 Month Notice posted on their door by the landlord on April 26, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenant handed them a copy of the tenant's dispute resolution hearing package on May 9, 2019, and received their written evidence sent by registered mail on May 3, 2019, I find that the landlord was duly served with this package in accordance with sections 88 and 89 of the *Act*. Since the tenant confirmed that they had received the landlord's written, I find that the landlord's written evidence was duly served in accordance with section 88 of the *Act*.

Preliminary Issues

At the hearing, the tenant said that they had received a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on June 4, 2019. The landlord's representative (the landlord) gave sworn testimony that this Notice was issued in error as the landlord had mistakenly removed the tenant's direct deposit information from their records, assuming that the tenancy would end by May 31, 2019, the effective date of the 1 Month Notice. The landlord said that they had subsequently accepted the tenant's rent payment for June 2019, retracting the 10 Day Notice that had previously been issued. The 10 Day Notice is hereby set aside and of no force or effect.

In their written evidence, the tenant attempted to seek a monetary award for the loss in the value of their tenancy as a result of construction that had been undertaken on the rental unit while the tenant still lives there. As the tenant did not amend their original application to include this request, I advised the parties that it would be unfair to proceed to consider the tenant's request for a monetary award beyond the request for the recovery of their filing fee from the landlord. I have not included the tenant's request for a monetary award for the loss in value of their tenancy as part of my decision.

Issues(s) 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 recover the filing fee for this application from the landlord?

Background and Evidence

On December 20, 2017, the parties signed a fixed term Residential Tenancy Agreement (the Agreement) that was to allow the tenant to reside in this rental unit from December 20, 2017 until June 30, 2018. When this fixed term expired, the tenancy continued on a month-to-month basis. Monthly rent is set at \$1,200.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$600.00 security deposit paid on December 19, 2017.

The parties conducted a joint move-in condition inspection of the rental unit on December 20, 2017. In the report of this inspection, many items in this rental unit were identified as being chipped, damaged or requiring cleaning. At the hearing, the landlord testified that the rental unit "was not in pristine condition" at the beginning of this tenancy.

The tenant entered into written evidence a copy of the 1 Month Notice, seeking an end to this tenancy by May 31, 2019, for the following three reasons:

Tenant or a person permitted on the property by the tenant has:

- *put the landlord's property at significant risk.*

Tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site.

The landlord entered into written evidence a copy of a March 11, 2019 letter to the tenant, which the landlord said resulted from a condition inspection conducted shortly before that letter was issued. This letter asked the tenant to remove nail polish from the floor, pencil/crayon markings from the walls, and stickers from the floor. The letter also asked about the whereabouts of a handrail which was no longer installed in the rental unit. The letter advised that another General Inspection would be conducted within a few weeks and that the landlord expected that action would have been taken by that time to clean and restore the rental unit to acceptable condition

by that time. The landlord also supplied copies of photographs of the rental unit taken prior to the issuance of the March 11, 2019 letter. These photographs identified a series of concerns about the cleanliness of the rental suite and damage that had been identified that led to the issuance of that letter. At the hearing, the landlord confirmed that the March 11, 2019 letter was not a "Warning Letter" in that it did not indicate that a failure to rectify the problems cited in the March 11, 2019 could lead to the issuance of a 1 Month Notice and lead to the end of this tenancy.

A flood occurred in this rental unit on March 20, 2019 causing major damage to three rooms in the rental unit. Work was performed by contractors hired by the landlord's insurance company to restore and renovate the premises following that flood. The landlord gave undisputed sworn testimony and written evidence that the tenant had requested to remain in the rental unit while the repairs and restoration occurred rather than being required to end the tenancy while this repair and restoration work was undertaken. The landlord claimed that these contractors advised the landlord that as fast as the contractors could upgrade and repair the premises, the tenant was damaging the premises on an ongoing basis.

The landlord said that when they returned to inspect the premises on April 26, 2019, there was still damage to the rental unit that confirmed the information provided to the landlord by the contractors. The landlord confirmed that they did not take any photographs of the rental unit at that time.

The tenant provided a very different account of the extent to which they had taken steps to address the deficiencies noted in the March 11, 2019 letter. The tenant said that they removed the nail polish from the floor, removed all pencil and crayon marks from the walls, save for one small area, but forgot to remove the stickers from the floor. The tenant said that they were living in a construction zone for many weeks following the flood, with bare concrete floors. They said that they had had to remove items from some of the rooms to accommodate the contractors' work schedule and that they did not know when the contractors were returning to conduct some of this work. The tenant entered photographic evidence to demonstrate that they had cleaned and repaired the rental unit as requested in the March 11, 2019 letter, but for some minor oversights. The tenant also claimed that the joint move-in condition inspection report confirmed her assertion that damage to one of the walls was noted by both parties at the beginning of this tenancy. The tenant said that now that they were working following the completion of their academic studies, they have retained a cleaner who comes to the rental suite once per week to ensure that the premises are clean.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the

tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Although I have given the landlord's written and photographic evidence and sworn testimony careful consideration, I find that the landlord has failed to meet the burden of proof required to end this tenancy for the reasons stated in the 1 Month Notice. The landlord provided only photographs of the rental unit well before the March 11, 2019 letter was issued. Even though the March 11, 2019 was not a formal warning that failure to bring the rental unit up to acceptable standards of repair and cleanliness could lead to the end of this tenancy for cause, the tenant supplied adequate evidence, both photographic and in sworn testimony as to the condition of the rental unit on April 26, 2019, the date the landlord issued the 1 Month Notice. I am satisfied to the extent required that the tenant did take measures to address most of the concerns raised in the March 11, 2019 letter. Many of the landlord's original photos flagged issues of temporary messy housekeeping, which does not equate to having caused extraordinary damage to the rental unit or putting the landlord's property at significant risk. By contrast, the landlord took no photographs of the condition of the rental unit close to the date of the April 26, 2019, nor did the landlord produce any direct evidence signed by the contractors to confirm the landlord's claim that they had observed ongoing damage to the rental unit that had not been repaired. The contractors did not attend this hearing to provide any direct testimony with regard to the condition of the rental unit.

In coming to this conclusion, I also take into account that the joint move-in condition inspection report reveals a rental unit that had many deficiencies identified when this tenancy began. There is also undisputed sworn testimony and written evidence that the rental unit was under an extensive series of repairs and renovations following the flood of March 20, 2019. Under these circumstances, I find it somewhat understandable that the rental unit would be in a state of disarray at times when the contractors attended the rental unit and when the landlord conducted inspections. I am also satisfied that the tenant has provided undisputed sworn testimony that they are taking corrective action to ensure that the rental unit remains in clean condition following the issuance of the 1 Month Notice.

Under these circumstances, I find that the landlord has not demonstrated on a balance of probabilities that this tenancy should be ended for cause. I find that the landlord has failed to provide sufficient evidence to support ending this tenancy for any of the reasons cited in the 1 Month Notice.

Since the tenant has been successful in their application, I allow the tenant to recover their \$100.00 filing fee from the landlord.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice. This tenancy continues until ended in accordance with the *Act*. The 1 Month Notice is hereby set aside and is of no continuing force or effect.

I allow the tenant to recover their \$100.00 filing fee from the landlord. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. Alternatively, the tenant may also implement this monetary award by withholding a future monthly rent payment by \$100.00, in which case the attached monetary Order is of no continuing force.

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: June 11, 2019

Residential Tenancy Branch