



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, OLC, LRE, FFT

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause; orders for repairs and compliance; and, to set conditions on the landlord's right to enter the rental unit. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Since the tenant identified multiple issues on a single application, in keeping with Rule 2.3 of the Rules of Procedure, I determined it to be necessary and appropriate to identify the primary issue(s) to resolve. I determined the validity of the 1 Month Notice was the primary issue since the tenant seeks to continue the tenancy. I proceeded to hear from both parties with respect to the 1 Month Notice and upon hearing from both parties I provided an oral decision to cancel the 1 Month Notice. In the hearing time that remained I addressed the tenant's request for repairs to the electrical system since the landlord also identified that as source of conflict. The hearing time expired before any other issues were addressed and those issues are dismissed with leave to reapply.

Issue(s) to be Decided

1. Should the 1 month Notice to End Tenancy for Cause dated May 21, 2019 be upheld or cancelled?
2. Is it necessary and appropriate to issue repair orders to the landlord with respect to the electrical system?

Background and Evidence

The tenancy started approximately 4 or 5 years ago under an oral agreement. The landlord collected a security deposit of \$400.00 and the tenant is currently paying rent of \$850.00 per month.

The rental unit was described as a basement suite and that there are two other basement suites in the house, along with the two upper floors that are occupied by the landlord and her family.

According to the landlord, the rent is due on the first day of every month although the tenant has been paying rent after the first almost every month without complaint by the landlord. According to the tenant, when the tenancy formed the landlord insisted on cash payments only and the tenant informed the landlord that to insist on cash would mean rent would be a little later than the first day of the month. The landlord acknowledged that she did require the tenant to pay rent in cash when the tenancy formed. The tenant stated that since she continued to pay rent in cash as required by the landlord she has paid rent after the first nearly every month until she received the landlord's letter dated April 30, 2019. The landlord's letter of April 30, 2019 was provided as evidence and both parties referred to it.

In the letter of April 30, 2019 the landlord put the tenant on notice that she would no longer tolerate payment of rent after the first day of the month. The landlord also stated in the letter that the tenant was making the breakers go off. In the letter the landlord gave the tenant until May 31, 2019 to correct these situations or else she would serve an eviction notice to the tenant.

On May 21, 2019 the tenant gave a written demand to the landlord to make electrical repairs. On May 21, 2019 the landlord gave a notice to the tenant that an electrician had been called and the landlord was hoping the electrical could attend that day. Then in another notice dated May 21, 2019 the landlord informs the tenant that the electrician had attended and had fixed the switches and outlets.

Also on May 21, 2019 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause indicating the tenancy was ending because the tenant was "repeatedly late paying rent". The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

Both parties provided consistent testimony that the tenant obtained cheques for her bank account and has provided the landlord rent by way of these cheques on June 1, 2019 and July 1, 2019. The landlord confirmed that she will accept rent by way of cheque from the tenant since this has been a long-standing tenancy at this point.

The tenant was of the position she has rectified the situation with respect to paying rent on the first in accordance with the landlord's April 30, 2019 letter.

The landlord submitted that she issued the 1 Month Notice prior to May 31, 2019, on May 21, 2019, because of ongoing electrical issues in the rental unit; however, the landlord also testified that after the most recent attendance by the electrician the electrical issue had been resolved to the best of the landlord's knowledge.

Both parties provided consistent testimony that an electrician attended to the property most recently approximately one month ago and since then full power to the rental unit has been restored and there have been no instances of the breaker(s) going off.

The tenant stated she has not plugged in her various appliances for fear of tripping a breaker and making the landlord angry so she is uncertain as to whether the electrical issue has been resolved since the electrician attended.

The landlord was of the position the tenant's actions have contributed to the electrical breakers tripping, pointing out the tenant has a deep freeze plugged into the bathroom outlet and uses a 1500 watt portable heater instead of the baseboard heaters. The tenant acknowledged that she has these appliances plugged into the outlets but stated she has had these appliances since the tenancy formed without much of an issue until the landlord renovated the upper floor kitchen in February 2018. The landlord stated the upper floors are on their own electrical panel and the basement suites are separate circuits so the kitchen renovation would not cause the circuits in the rental unit to trip. The tenant stated that her rental unit is not the only rental unit on the same circuit.

The landlord requested that it be noted for the record that the tenant needs to ensure there is sufficient clearance around the baseboard heaters. The tenant stated the baseboard heater thermostats are currently turned off and she understood there needs to be clearance before turning the baseboard heaters on.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

The Notice to End Tenancy served upon the tenant on May 21, 2019 provides one reason for ending the tenancy: repeated late payment of rent. No other reasons for ending the tenancy were provided on the 1 Month Notice and it is not before me to determine whether the tenancy should be ended due to the tenant's use of the electrical system. Therefore, I proceed to determine whether the tenancy should end for repeated late payment of rent.

Under section 13 of the Act, a tenancy agreement must be in writing and stipulate the date rent is due, among other things. In this case, there was no written tenancy agreement to demonstrate the date rent is due. The parties had a different recollection as to what was agreed upon at the start of the tenancy; however, they provided consistent testimony that the tenant almost always paid rent in cash, as required by the landlord, after the first day of the month. In the absence of a written tenancy agreement, opposing testimony as to what was agreed upon when the tenancy formed, and the long established practice of paying rent after the first day of the month on various different dates, I find it is unclear as to the due date for rent.

Where parties have an established practice that extends over a long period of time, where one party seeks to enforce a term, I find it reasonable to expect that the party seeking the change in practice would put the other party on notice. In this case, the parties had a long established practice of paying/receiving rent in cash after the first day of the month without complaint of a breach until the landlord issued a formal written notice on April 30, 2019. The landlord gave the tenant until May 31, 2019 to ensure rent was paid on the first; yet, the landlord issued the 1 Month Notice prior the effective date and I find the landlord's issuance of the 1 Month Notice is inconsistent with her notice to the tenant on April 30, 2019. Rather, I find the tenant had a reasonable expectation that she may rely upon the landlord's letter of April 30, 2019 and the tenant did in fact take action to comply with the landlord's demand that the tenant pay by the first of the month by May 31, 2019. Therefore, I find the landlord was pre-mature in issuing the 1 Month Notice on May 21, 2019 and I cancel the 1 Month Notice with the effect that the tenancy continues at this time.

Since the Act requires that a due date be established for rent payments and the tenant has accepted the landlord's request to pay rent on the first, I order that starting on June

1, 2019 the rent is due on the first day of every month. The tenant must ensure she presents payment of rent to the landlord on the first day of every month and if she fails to do so on at least three occasions the landlord may serve the tenant with another 1 Month Notice citing “repeated late payment of rent” as the reason for ending the tenancy.

As for the tenant’s request for electrical repairs, based on the tenant’s own testimony I find it is unclear as to what the status of the electrical system since the electrician attended the property approximately one month ago. The tenant indicated she has not had a breaker trip since then but that she has not fully tested the system. If the system has been repaired as purported by the landlord then repair orders would not be necessary. Accordingly, I make no orders to the landlord with this decision to make repairs to the electrical system but I dismiss this remedy with leave to reapply in the event the electrical system has not been sufficiently repaired.

As I informed the parties during the hearing, if the tenant encounters another problem with the electrical system she is expected to notify the landlord promptly and the landlord is expected to investigate and take appropriate action upon receiving the tenant’s notification. The tenant is also expected to use the rental unit in a manner in which it was designed. If the rental unit is equipped with baseboard heaters it is expected that is the manner in which the tenant would heat the unit as using portable heaters likely puts a strain on a different electrical circuit especially considering the tenant also has a freezer plugged into an outlet in the rental unit. As pointed out by the landlord, using baseboard heaters would mean the tenant must ensure there is sufficient clearance around the baseboard heaters when the heaters are in use so as to not create a fire hazard.

I also informed the parties that upon receiving a complaint or request for repairs from the tenant the landlord may need to enter the rental unit to investigate and/or make repairs and that the Act provides for a landlord’s restricted right to enter under the Act. Below, I have reproduced section 29 of the Act for the parties’ further reference:

Landlord's right to enter rental unit restricted

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Having found the landlord prematurely issued the 1 Month Notice and the tenant was successful in seeking cancellation of the 1 Month Notice, I award the tenant recovery of the \$100.00 she paid for this application. The tenant is authorized by way of this decision to deduct \$100.00 from a subsequent month's rent payment in satisfaction of this award.

Conclusion

The 1 Month Notice dated May 21, 2019 is cancelled and the tenancy continues at this time.

I have ordered that starting on June 1, 2019 the rent is payable on the first day of every month.

I have not issued any other orders with this decision; however, the tenant is granted leave to reapply to seek repair orders or orders for compliance if necessary after the date of this hearing.

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: July 11, 2019

Residential Tenancy Branch