



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, LAT, LRE, MNDCT, OLC, PSF, RP, RR, CNC

Introduction

This hearing was convened as a result of the Tenant's two Applications for Dispute Resolution, made on June 4 and 5, 2019, (the "Applications"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a One Month Notice to End Tenancy for Cause dated June 4, 2019 ("the One Month Notice");
- an order for a rent reduction;
- an order for regular repairs;
- an order to provide services or facilities required by a tenancy agreement or law;
- a monetary order for damage or compensation;
- an order for the landlord to comply;
- an order to restrict or suspend the Landlord's right to enter;
- an order authorizing the Tenant to change the locks; and
- an order granting the recovery of the filing fee.

The Tenant, the Landlord, and the Landlord's witness K.E. attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that he served his Application and documentary evidence package to the Landlord by registered mail on June 11, 12 and 16, 2019. The Landlord confirmed receipt of each package. The Landlord testified that she served the Tenant with her documentary evidence in person on July 14, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement or the *Act*.

The Tenant's request for an order for a rent reduction, an order for regular repairs, an order to provide services or facilities required by a tenancy agreement or law, a monetary order for damage or compensation, an order for the Landlord to comply, an order to restrict or suspend the Landlord's right to enter, and an order authorizing the Tenant to change the lock are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated June 4, 2019 pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on March 1, 2015. Currently, the Tenant pays rent in the amount of \$950.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$475.00, which the Landlord continues to hold.

The Landlord stated that she served the Tenant with the One Month Notice on June 4, 2019 with an effective vacancy date of July 31, 2019, by positing it on the door of the dispute address, as well as by placing a copy of the notice in the Tenant's mailbox. The

Tenant confirmed having received the One Month Notice on June 4, 2019. The Landlord's reasons for ending the tenancy on the One Month Notice are;

"The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

"The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant, and jeopardized the lawful right or interest of another occupant or Landlord."

The Landlord testified that she decided to list her house for sale and notified the Tenant in writing of her intent to do so. The Landlord stated that the Tenant had resisted her requests to have the rental unit cleaned, specifically the removal of spare tires as well as gardening pots left outside of the rental unit.

The Landlord stated that she has provided the Tenant with several notices of entry in relation to the listing the property, taking pictures of the residence for the listing, as well as to establish a showing schedule. The Landlord stated that she provided the Tenant with written notice prior to entry on May 29, June 1, and June 4, 2019. The Landlord stated that the Tenant has refused her access to the rental unit. As a result, the Landlord was delayed in listing her home and has suffered a loss from the asking price of her home as a result.

In response, the Tenant stated that he has complied with the Landlord's request to remove his tires and gardening pots from the yard. The Tenant stated that he did not consent to the Landlord entering the rental unit, as he was too busy and was unable to be in attendance. The Tenant stated that he is concerned about his personal possessions being photographed and used in listings. The Tenant confirms that he was provided written notice of the Landlord's intent to enter the rental unit and stated that he has since allowed the Landlord to enter on several occasions, despite the fact that he continues to feel as though the Landlord is not complying with the Act.

The Landlord's witness, K.E., stated that she is a Realtor and stated that it has been difficult to list the home for sale given the Tenant's resistance to her and the Landlord entering the rental unit. K.E. stated that this has led to a delay in listing the home for sale, and that the market is now slow, which has resulted in the Landlord potentially suffering a loss. K.E. stated that the Tenant has threatened to complain on her to the Real Estate Board. K.E. stated that the pictures for the listing are necessary and that she would make every attempt to maintain the Tenant's privacy by not including his personal possession in the listing photos. Furthermore, K.E. stated that she would give the Tenant ample notice in relation to any upcoming showings.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on June 4, 2019 with an effective vacancy date of July 31, 2019, by posting it on the door of the dispute address as well as by placing a copy in the Tenant's mailbox. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I accept that the Landlord has served the Tenant with proper notices of entry and that the Tenant has been resistant to the Landlord and the Realtor entering his suite to take pictures in order to list the home for sale. I find that the Tenant has some valid concerns regarding his right to privacy. I accept that the Tenant refused the Landlord entry to the rental unit on May 29, June 1, and June 4, 2019; however, I find that the Landlord and the Realtor have since been able to access the rental unit without incident.

In this case, the Tenant has a right to quiet enjoyment and peaceful occupation of the premises. At the same time, the Landlord has the right to enter under certain conditions. The *Act* addresses the rights and obligations of Landlords and Tenants with respect to entry into a rental unit. While there may have been some initial resistance from the Tenant regarding allowing access to the rental unit, I find that there were some misunderstandings and miscommunications between the parties which contributed to the disagreement around the Tenant allowing the Landlord access to the rental unit.

The Residential Tenancy Branch Police Guideline 7 offers some useful information which is applicable to both parties in this situation;

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.

- 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,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m. Notices must also be served in accordance with the Act.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. An arbitrator may find that the holding of an "Open House" by the landlord's realtor is not a reasonable purpose if the landlord cannot ensure the safety of the tenant's possessions.

In this case, the Landlord is seeking to end the tenancy based on the fact that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

According to the Policy Guideline #8; a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and, that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that the Landlord did not communicate to the Tenant that denying the Landlord access to the rental unit was a breach of a material term of the tenancy agreement, nor did she indicate that the problems needed to be fixed by a reasonable deadline or else the tenancy would end. For these reasons, I find that the Landlord did not provide adequate notice to the Tenant pursuant to section 45(3) of the *Act*.

The Landlord has also indicated on the Notice to End Tenancy that the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant, and jeopardized the lawful right or interest of another occupant or Landlord.

I find that during the hearing, the Landlord provided insufficient evidence that the Tenant has engaged in any kind of illegal activity. Furthermore, the Landlord provided insufficient evidence that the Tenant has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant, and jeopardized the lawful right or interest of another occupant or Landlord.

In light of the above, I cancel the One Month Notice, dated June 4, 2019. I order the tenancy to continue until ended in accordance with the *Act*.

The parties are encouraged to abide by the terms set out in Policy Guideline 7 described above. I caution the tenant that should he unreasonably deny the Landlord or the Realtor access to the rental unit after proper written notice is provided in accordance with the *Act*, he is now sufficiently warned that this may give the Landlord sufficient cause to end the tenancy.

As the Tenant was successful in his Application, I find that he is entitled to the recovery of the filing fee. I find that the Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated June 4, 2019 is cancelled. The tenancy will continue until ended in accordance with the Act.

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 24, 2019

Residential Tenancy Branch