



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord attended with an assistant C.V.

The landlord confirmed receipt of the tenant's notice of dispute resolution proceeding package, including the tenant's evidence. The tenant confirmed receipt of the landlord's evidence. As such, based on the testimony of the parties, I find that the documents for this hearing were served in accordance with this *Act*.

Preliminary Issue - Procedural Matters

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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the form and content requirements of section 52 of the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the notice?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This month-to-month tenancy began June 1, 2004.
- Current monthly rent of \$916.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$332.50, which continues to be held by the landlord.

The tenant confirmed that the landlord personally served him with the One Month Notice dated August 17, 2019 on that day. The tenant filed an Application for Dispute Resolution to cancel the notice on August 22, 2019, within the time limits of the *Act*.

Neither party submitted a copy of the One Month Notice into evidence prior to the hearing. I allowed the landlord to upload a copy of the notice to the Residential Tenancy Branch dispute website after the hearing, in order for me to confirm if the notice met the section 52 form and content requirements.

The One Month Notice stated an effective move-out date of September 17, 2019, with the following boxes checked off as the reasons for seeking an end to this tenancy:

Tenant or a person permitted on the property by the tenant has (check all boxes that apply):

- *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.*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The "Details of Cause" section of the notice stated the following:

*Refer to attached: 1) Termination Notice Letter - dated August 17, 2019
2) Fire Protection Notice - dated August 7, 2019
3) Last Warning Letter - dated July 21, 2019.*

(Reproduced as written)

The landlord provided additional details of cause in the attached documents referenced under the Details of Cause section.

The landlord claimed that the tenant had received a last warning letter on July 21, 2019 regarding the tenant's breach of term 19 of his tenancy agreement, pertaining to tenant conduct. The landlord claimed that the tenant's repeated requests for repairs and maintenance, including requests for replacement of appliances over the past nine years of the tenancy constituted harassment of the landlord and other residents of the building.

After serving the tenant with the July 21, 2019 warning letter, the landlord contended that the tenant deliberately caused a fire alarm to go off in his rental unit on August 7, 2019. The landlord considered this to be sabotage in addition to continued harassment and issued the One Month Notice.

The tenant testified that he felt entitled to a replacement stove due to the age of it, and informed other tenants of his request, and as such, he did not consider this to be harassment. The tenant submitted photographic evidence of a dead mouse in support of his claim that he has asked for maintenance and repairs as needed.

The tenant testified that on August 7, 2019 he heard the alarm, exited the rental unit and apartment building with the rest of the residents. He testified he called 911 as no fire trucks were responding. He disputed the landlord's claims that he deliberately triggered the heat detector in his rental unit to go off.

The landlord testified that the fire department advised the landlord that the alarm originated from the 5th floor of the building, and required the landlord to have a fire safety professional attend at the building to check the fire equipment as the fire department was unable to reset the panel, meaning there was an issue requiring attention.

The landlord testified that the fire safety professional checked the fire detection equipment in the tenant's rental unit and found that the heat detector needed to be replaced as it had been "triggered". The landlord testified that all the equipment had been checked a few months earlier and all equipment was functioning.

The landlord did not provide any evidence in support of their claim that the tenant tampered with the heat detector. The tenant disputed the landlord's claim.

Analysis

Section 47 of the *Act* provides that upon receipt of a One Month 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 was in receipt of the landlord's One Month Notice on August 17, 2019. The tenant filed an application to dispute the notice on August 22, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

In the case before me, the landlord had no documentary evidence to support his claims that the tenant tampered with the fire detection equipment in his rental unit. Given that the tenant disputed the landlord's allegations, and given the seriousness of this allegation, and the potential for significant legal consequences for such an action, I find it reasonable to expect that the landlord would have sought evidence to support such an allegation. The landlord could have requested the fire safety professional attend the hearing to provide first-hand witness testimony, or to provide a written report setting out the evidence to support the claim that the tenant deliberately triggered the heat detector, as opposed to the alarm resulting from an equipment malfunction.

As such, I find that there is insufficient evidence to find that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or that the tenant put the landlord's property at significant risk.

Although the landlord testified they had verbally continued to have issues with the tenant from July 21, 2019 when the warning letter was sent and when the One Month Notice was issued, there was no documentary evidence submitted that the tenant had continued to breach any terms of his tenancy agreement since being issued the warning letter. Therefore, I find that there is insufficient evidence to find that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Further, I find that there is insufficient evidence that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord submitted a letter from another resident in the building dated after the date the One Month Notice was served, therefore I have not considered it as it was not a contributing factor in issuing the notice. The landlord submitted a list of 24 grievances against the tenant dating back to 2010 mostly related to the tenant's requests for service, or an issue pertaining to an unauthorized occupant in the tenant's rental unit in 2013 and 2017. In the list, I note that in the past year, the landlord referred to one letter from another tenant and two requests for service to the landlord regarding a stove. Based on this evidence, I do not find that the threshold for "significant interference" or "unreasonable disturbance" has been met given the number of years that the interactions spanned and the nature of the interactions.

In summary, based on the testimony and evidence presented to me, on a balance of probabilities, I do not find that the landlord has met the burden of proving the grounds for ending this tenancy. The tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant was successful in his application to dispute the landlord's notice to end the tenancy. I order that the One Month Notice to End Tenancy for Cause dated August 17, 2019 is cancelled and this tenancy shall continue until it is 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: September 24, 2019

Residential Tenancy Branch