



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MENKIS CONSTRUCTION LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT LRE OLC

Introduction

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

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- Authorization to recover the filing fee from the landlord pursuant to section 72;
- An order restricting the landlord's right to enter the rental unit pursuant to section 70; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by counsel. The corporate landlord was represented by its agent (the "landlord").

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. While the landlord submits that the tenant did not initially serve their materials at the landlord's address of service, they confirmed that they were in receipt of the materials. Based on the testimonies I find that each party was sufficiently served with the respective materials in accordance with sections 71, 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the other relief sought?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

This tenancy began in August, 2013. The current monthly rent is \$1,525.00 payable on the first of each month. The rental unit is on the 3rd floor of a multi-unit building with commercial space on the lower floors.

The landlord issued a 1 Month Notice dated July 26, 2019 providing the reason for the tenancy to end as the tenant has seriously jeopardized the health or safety of other occupants or the landlord. The landlord submits that the tenant has been engaged in ongoing conflicts with the building manager and other residents involving verbal threats and bad behaviour. The landlord submitted into evidence copies of incident reports, warning letters and correspondence with the police showing multiple complaints and attendance by police.

The tenant disputes the landlord's characterization of events and says that the landlord is the aggressor in their interactions. The tenant submits that the building manager for the landlord has entered the rental unit on occasions without proper authorization or notice.

The tenant included in their evidence a monetary award worksheet claiming an award for damages and loss arising from loss of quiet enjoyment due to the commercial businesses occupying the lower suites.

Analysis

Section 47 of the *Act* provides that upon receipt of a 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant seriously jeopardized the health or safety of other occupants and the landlord.

I find that in its totality the landlord has not established that there is a basis for this tenancy to end. I find much of the landlord's written evidence to be weak and of limited credibility. I find that typewritten anonymous complaints to be of little assistance in demonstrating that the tenant has engaged in behaviour that has jeopardized the health and safety of others. I do not find the police complaints made by the parties to be sufficient to demonstrate anything more than that there has been an ongoing uncivil relationship between the parties. It is available to anyone to file a police complaint and I do not find the police involvement to be sufficient evidence of the tenant's behaviour.

The tenant disputes the landlord's characterization of the interactions. I find that in its totality the landlord has not demonstrated on a balance of probabilities that there has been conduct by the tenant that would give rise to a cause for this tenancy to end. Even if I were to accept the landlord's evidence, I find that they demonstrate nothing more than hostile verbal interactions and it is a far cry from showing that there is any jeopardy to health or safety.

I find that the landlord has not established that there is a reason for this tenancy to end on a balance of probabilities and accordingly allow the tenant's application. The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

I find that the tenant has provided insufficient evidence in support of the other portions of their application. I do not find the tenant's submission that there was an incident where the landlord entered the rental suite to be sufficient evidence in support of an order that the landlord's right to enter the rental suite should be curtailed or limited. I will remind the parties that the *Act* sets out the manner by which a landlord may enter a rental suite during a tenancy and that both parties are well advised to conduct themselves in accordance with the *Act*.

While the tenant applies for an order that the landlord comply with the Act, regulations or tenancy agreement, they have made no submissions on what specifically they believe the landlord has breached. The tenant's written submissions consist of general complaints and conjecture about other tenancies. I find that the tenant has not provided

any cogent submission on what they believe the landlord has breached and consequently dismiss this portion of their application.

Residential Tenancy Rule of Procedure 6.2 provides that a hearing is limited to the matters claimed on the application. The tenant included in their evidentiary materials a claim for a monetary award for damages and loss arising from loss of quiet enjoyment. A claim made in the evidence and not the application will not be considered. I note parenthetically, that I find no evidence of any loss of quiet enjoyment arising from the landlord's conduct.

As the tenant's application was successful they are entitled to recover their filing fee from the landlord. As this tenancy is continuing the tenant may recover this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The portion of the tenant's claim to cancel the 1 Month Notice is allowed. The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant may make a one-time deduction of \$100.00 from their next scheduled rent payment.

The balance of the tenant's application is dismissed without leave to reapply.

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: October 7, 2019

Residential Tenancy Branch