



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding POPULAR DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 2, 2019, to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on August 28, 2019 and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

Preliminary and Procedural issues

The tenants counsel confirmed they received the evidence from the landlord.

The advocate for the landlord objected to the affidavit of RW and they did not accept service as it was not within the statutory time limit. The advocate stated that they do have a copy of the affidavit.

The tenants counsel submits the affidavit of RW was obtained on October 7, 2019, and it took time to locate RW, who was the previous property manager for approximately 27 years.

In this case, I accept the tenants counsel submission that the affidavit of RW could not have been obtained earlier. I find the affidavit not prejudicial to the other party as it mostly relates to the character of the tenant during their property management duties.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

At the outset of the hearing the parties agreed the issue of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, does not need to be considered as rent was paid within 5 days cancelling the notice to end tenancy.

Issues to be Decided

Should the Notice issued on August 28, 2019 be cancelled?

Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on September 30, 2019.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardize the health, or safety or lawful right of another occupant or the landlord.

The landlord's agent testified that on August 2, 2019, they posted a 10 Day Notice to End the Tenancy for unpaid rent due on August 1, 2019. The landlord's stated that the tenant verbally assaulted their spouse and was slamming their door and yelling causing other occupants to be disturbed and concerned for their spouse's safety.

The advocate for the landlord referred to the affidavits of ME, and LD, which I have reviewed and considered.

The tenant testified that they have lived at the premises for 9 ½ years and has always paid their rent on time. The tenant stated that they have always given the landlord

postdated cheques for the year on December 18, of each year. The tenant stated that there was a change in management in July 2019 and they were given back their postdated cheques. The tenant stated that they had arranged with the owner in the later part of July 2019, that they would come by on August 1, 2019, to pick up the rent cheque; however, the owner did not show up.

The tenant testified that the next day they found a 10 Day Notice to End Tenancy for unpaid rent. The tenant stated that they were upset by receiving the notice to end tenancy and did not respond appropriately as they were frustrated. The tenant stated that they slammed their door and did yell, but there was never any threats or violence.

Filed in evidence is a police report which states as follows,

“On August 02, 2019 at approximately 1809 hrs., ME called police and reported that (tenant) was causing a disturbance at his residence located at

On August 02, 2019, at approximately 2215 hrs., A/Sgt ... spoke to ... over the phone. She stated:

- tenant had been served with an eviction notice earlier that day.
- He was in his suite with the door propped open, which he often does for the heat.
- Tenant heard her put the keys in the door and slammed his suite door multiple times so hard it shook debris off the walls. Tenant yelled and swore from inside his suite.
- A neighbor came to see what was going on and was concerned about tenant's behavior. ...”

[Reproduced as written.]

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing.

In this case, the reason the Notice was issued was the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I accept the evidence of the tenant that they had arranged with the owner to pickup the rent on August 1, 2019 at 6:30pm and the owner did not attend. I accept the tenant was frustrated the next day when they received the notice to end tenancy for unpaid rent from the new property management.

While I accept the tenant's, behavior was not appropriate on August 2, 2019, it was clearly out of frustration of receiving the notice to end tenancy when they had made prior arrangements to pay rent on August 1, 2019. The tenant had also previously given to the landlord's property manager postdated cheques for a twelve-month period, including this period. However, the cheques were returned to the tenant due to the change in management, I find it would have been reasonable for those cheques to be given directly to the new management.

There were no threats of violence or acts of violence and the incident would not have occurred if the owner had attended to pick up the rent when agreed upon. It appears there was a lack of communication between the owner and the property management during this transition period, causing the tenant to become frustrated.

Further, this appears to be a onetime incident over a course of 9 ½ year tenancy and more likely due to the change of management. There have been no further issues since August 2, 2019, other than the tenant keeping their door open, which is not the subject for the Notice being issue and that alone is not enough to end a tenancy.

Furthermore, there was no evidence that the tenant jeopardizes the health or safety or the lawful rights of another occupant or the landlord.

I find the evidence does not support the Notice was issued for the reasons stated. Therefore, I find it appropriate to cancel the Notice. The tenancy will continue until legally ended under the Act.

As the tenant was successful with their application, I find the tenant is entitled to recover the filing fee from the landlord. I authorize the tenant a onetime rent reduction of \$100.00 from a future rent payable to the landlord.

However, I find it appropriate to make the following orders.

I Order the tenant to keep the door to their residence closed.

I further Order the tenant not to engage in any behavior such as yelling or slamming doors and keep noise to a reasonable level.

I further Order that the landlord or the landlord's agent has the right to exercise their rights under the Act, such as serving notice or discussing complaints with the tenant.

Conclusion

The tenant's application to cancel the Notice, issued on August 28, 2019 is granted. The tenancy will continue until legally ended under the Act. I authorize the tenant a onetime rent reduction of \$100.00 from a future rent payable to recover the cost of the filing fee.

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 10, 2019

Residential Tenancy Branch