



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOOYENGA HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, AAT, PSF, RP, OPC

Introduction

This hearing dealt with cross applications filed by the parties. On August 2, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”), seeking a repair Order pursuant to Section 32 of the *Act*, seeking access to the rental unit pursuant to Section 30 of the *Act*, and seeking provision of services or facilities pursuant to Section 62 of the *Act*. On August 14, 2019, this Application was set down for a participatory hearing on October 10, 2019 at 11:00 AM.

On August 21, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for Cause pursuant to Section 47 of the *Act*. On August 21, 2019, this Application was set down for a participatory hearing to be heard as a cross application with the Tenant's Application.

On September 5, 2019, the Tenant amended her Application seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*.

The Tenant attended the hearing with M.S. attending the hearing as an advocate for the Tenant. R.D. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by registered mail and R.D. acknowledged that this package was received on August 26, 2019. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that she served her Amendment to the Landlord by registered mail on September 7, 2019 and R.D. acknowledged that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that she served her evidence to the Landlord “at least two weeks before the hearing.” R.D. advised that he received this evidence on October 2 and October 4, 2019. As service of this evidence does not comply with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this decision.

R.D. advised that he served the Landlord’s evidence by registered mail to the Tenant on September 20, 2019 and the Tenant confirmed that she received this evidence. As service of this evidence complies with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As stated during the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord’s One Month Notice to End Tenancy for Cause and 10 Day Notice to End Tenancy for Unpaid Rent, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notices cancelled?
- If the Tenant is unsuccessful in cancelling the Notices, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2013 and a security deposit of \$275.00 was also paid. A copy of the signed written tenancy agreement was submitted as documentary evidence.

R.D. advised that the 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenant by posting it on her door on September 3, 2019 and the Tenant confirmed that she received this on September 5, 2019. This Notice stated that \$15.00 was outstanding on September 1, 2019 and the effective end date of the tenancy was September 15, 2019. He stated that he issues all his tenants a rent increase at the same time each year and serves them with the approved form in February. However, the Tenant did not pay the rent increase on time in June, July, August, or September 2019 so he texted, called, and emailed her to remind her about the rent increase effective for June 1, 2019.

The Tenant stated that she never received the rent increase form and she kept asking R.D. to provide her with a copy of it; however, he would not make her a copy. She read from text messages that she had with R.D. from July 2019 asking for a copy of the rent increase form; however, R.D. repeated that he had already served her with a copy and would not provide her with another. She stated that R.D. would tell her that the rent increase was due, so she would pay it despite not receiving the form. She also acknowledged that the Landlord increases the rent every year at the same time and she “may have lost” the form. M.S. advised that rent is paid by the Ministry so it cannot be late. As well, she reiterated that the Tenant did not have the rent increase form to take to the Ministry to have the rent payments updated.

R.D. stated that he served the rent increase form in February “either on the door or under the door.” He advised that the Tenant only asked for a copy of the rent increase form in August and he gave her a copy of it then. However, he contradictorily

acknowledged that the Tenant had texted him in July, requesting a copy of this form, and he repeated that he was unable to give her a copy as he would have to get one duplicated from head office.

R.D. advised that the One Month Notice to End Tenancy for Cause was served to the Tenant on July 30, 2019 in person and the Tenant confirmed that she received this on this date. The reasons the Landlord served this notice are because the "Tenant allowed an unreasonable number of occupants in the unit/site", the "Tenant or a person permitted on the property by the tenant has unreasonably disturbed another occupant or the landlord", and because the "Tenant has not done required repairs of damage to the unit/site." This notice indicated that the effective end date of the tenancy was September 1, 2019.

He stated that on July 4, 2019, a moving van pulled up and people started unloading furniture into the rental unit. A lady who was moving was questioned and she confirmed that she was moving into the rental unit. He advised that he has two letters from other tenants confirming this, but he did not submit these as evidence. He stated that he conducted an inspection of the rental unit on July 19, 2019 and observed the Tenant's daughter living in the rental unit with lots of furniture, so he gave the Tenant a written warning about this issue.

The Tenant advised that her daughter moved in for about nine days and then found a new place to move as of July 19, 2019.

R.D. has not done any follow up of the rental unit to determine if the daughter still lives there; however, he confirmed that she did buzz the intercom to gain entry to the building on August 27, 2019.

R.D. advised that he gave the Tenant a written warning about her frequently buzzing other tenants of the rental building. He stated that on July 19, 2019, she buzzed one tenant seven times in a short timeframe, then buzzed him at 2:55 AM to be let into the building. He stated that this happened only the one time recently; however, the Tenant did call the fire department to have them let her in in January 2018.

The Tenant advised that she went downstairs to get her daughter on July 19, 2019 and accidentally locked herself out. As she did not have access to her oxygen tank, she was desperate to gain entry to the rental unit, but she did feel bad about buzzing the other tenant and R.D. She stated that she has received no complaints from any neighbours or received any written warnings.

Finally, R.D. advised that on March 1, 2013 when the Tenant moved into the rental unit. Some issues were noted on the move-in inspection report, and the condition of the rental unit was fine. However, the Tenant has cut the screen out of the door and damaged the blinds.

The Tenant stated that she never asked the Landlord to fix these issues.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's notices to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing these notices, I am satisfied that the notices meet all of the requirements of Section 52 and I find that they are valid notices.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by being posted to her door on September 3, 2019. However, I need to be satisfied that the Landlord served the Tenant with the proper Notice of Rent Increase form. While R.D. claims to have served this notice to the Tenant, he was not certain of the method that he served it. Alternately, while the Tenant claims she did not receive the form, she contradictorily stated that she may have lost it. I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim

has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, even though both parties' testimony is unreliable, I find the Landlord has failed to provide any evidence that the Tenant was served with the Notice of Rent Increase form.

As such, I am not satisfied that the Landlord increased the rent in accordance with the *Act* and therefore, I am not satisfied of the validity of the 10 Day Notice to End Tenancy for Unpaid Rent. Consequently, I find that this notice is of no force and effect.

With respect to the One Month Notice to End Tenancy for Cause, I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32

(3) [obligations to repair and maintain], within a reasonable time;

With respect to these reasons on this notice, the burden is on the Landlord to present persuasive evidence that supports their position for ending the tenancy. Regarding the issue of the unreasonable number of occupants, I find it important to note that the Tenant advised that her daughter moved out of the rental unit nine days after she moved in and R.D. has not conducted any subsequent inspection to confirm that the Tenant is in breach of the *Act*. Based on R.D.'s testimony, I do not find that his submissions and evidence are compelling enough to warrant an end to the tenancy for this reason.

Regarding R.D.'s submission of significant interference or unreasonable disturbance, I find it important to note that R.D. referenced one incident that occurred months ago and that there have not been any further, similar incidents since. In addition, a similar incident was instigated by the Tenant; however, this occurred almost two years ago. While I understand the frustration of this most recent incident, I do not find that R.D. has substantiated that this single, recent instance would constitute a significant or unreasonable disturbance that would meet the requirement for the justification of an end of the tenancy.

Finally, with respect to R.D.'s submission on the damage to the rental unit, I do not find any evidence of the Landlord notifying the Tenant to correct any damage to the rental unit. This would be the first step for the Landlord to take, and then this notice could potentially be served to the Tenant should the damage not be corrected. However, the damage that R.D. submitted was caused by the Tenant is not significant and does not impact the safety or functionality of the rental unit. As such, I am not satisfied that this damage would be sufficient enough to warrant the notice being served. The Tenant was cautioned, however, that she is responsible for repairing all damage to the rental unit caused by her by the end of the tenancy.

When considering the testimony of the parties and the totality of the evidence submitted, based on what was presented during the hearing, I am not satisfied that the Landlord has sufficiently substantiated the grounds for ending the tenancy under the reasons that "there are an unreasonable number of occupants in a rental unit", that the Tenant "significantly interfered with or unreasonably disturbed another occupant or the landlord", or that "the tenant does not repair damage to the rental unit or other residential property, as required under section 32(3) within a reasonable time." Ultimately, I am not satisfied of the validity of this notice and I find that this notice is of no force and effect.

Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid Rent of September 3, 2019 to be cancelled and of no force or effect. In addition, I hereby order that the One Month Notice to End Tenancy for Cause of July 30, 2019 to be cancelled and of no force or effect. The tenancy shall 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: October 22, 2019

Residential Tenancy Branch