



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, LRE, OLC, OT, OPC, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On August 19, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act"), seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking to set conditions on the Landlord's right to enter pursuant to Section 70 of the *Act*, and seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*. On August 20, 2019, this Application was set down for a participatory hearing on October 11, 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* and seeking to recover the filing fee pursuant to Section 72 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 August 21, 2019, the Tenant amended her Application to dispute the Notice and add details of her dispute.

The Landlord attended the hearing and the Tenant attend the hearing four minutes after it commenced. All in attendance provided a solemn affirmation.

The Tenant advised that she "believes" she served the Landlord the Notice of Hearing package by Xpresspost but she was not sure when. However, the Landlord confirmed that she received this package near the end of August 2019. As such, I am satisfied that the Landlord was served the Tenant's Notice of Hearing package.

The Tenant advised that she "did not remember" if she served her Amendment to the Landlord and explained that she did not know what this was. The Tenant was explained the nature of an Amendment. As the Landlord confirmed that she received the Tenant's Amendment, I am satisfied that this was served to the Landlord.

The Landlord advised that she served the Notice of Hearing and evidence package to the Tenant by registered mail on August 21, 2019 and the Tenant confirmed that she received this package. However, the Landlord stated that she did not serve the digital evidence to the Tenant. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord's Notice of Hearing and evidence package; however, as the digital evidence was not served in accordance with Rule 3.14 of the Rules of Procedure, I have excluded this evidence and it will not be considered when rendering this decision.

When the Tenant was asked if she served her evidence to the Landlord, she stated that she "does not know what that was" and that she is not sure if she served anything to the Landlord. When she was questioned about service of documents, she was unsure of if she served any documents, how they were served if she did serve them, and she asked me to tell her dates of service for her to acknowledge and confirm. As she was advised that I could not confirm any of these answers for her as she would be the only one who would know, and as the Landlord advised that she did not receive any evidence from the Tenant, I am not satisfied that the Landlord was served with the Tenant's evidence. As such, the Tenant's evidence was excluded and not considered 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 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 Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recovery of the filing fee?

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 August 1, 2019 and that rent was currently established at \$1,800.00 per month, due on the first day of each month. A security deposit of \$900.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

The Landlord advised that the Notice was served to the Tenant by hand on August 8, 2019 and the Tenant confirmed that she received this. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord”, 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 because of a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The Notice indicated that the effective end date of the tenancy was September 8, 2019.

With respect to the first reason why the Notice was served, the Landlord advised that the Tenant parked her vehicles in the driveway; however, parking was not included as part of the tenancy, as per the written tenancy agreement. She was allowed to park there to unload her possessions on moving day; however, she continued to park in the driveway consistently after that.

The Tenant was provided an opportunity to speak to this issue; however, throughout the 25-minute hearing, up to that point, the Tenant continuously stated that she was “tired” that she had “lots going on in her life”, and that she did not want to address these issues anymore. She initiated a settlement discussion as she no longer wished to live in the rental unit, and she continuously mentioned contacting the local municipality regarding the allowed occupancy of the rental unit. Throughout the hearing, the Tenant was combative and argumentative, and she was cautioned to refrain from such behaviour or she would be muted during the hearing. After eight minutes of a settlement discussion, the Tenant exited the hearing on her own accord.

The hearing continued at 11:33 AM without the Tenant’s participation. At this point, the Landlord advised that she had already been granted an Order of Possession of the rental unit on a previous file. The relevant file number is on the first page of this decision.

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.

As the Landlord advised that an Order of Possession was already granted to her against the Tenant for this rental unit, prior to this hearing, I am unable to end a tenancy that has been ended by an Order of Possession already granted. As such, I dismiss the Tenant's and Landlord's Applications without leave to reapply.

As the Landlord was not successful in this application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

As a decision has already been rendered on this issue, I dismiss the Tenant's and Landlord's Applications 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 11, 2019

Residential Tenancy Branch