



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, LAT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant DA (the tenant) confirmed that they were handed the 1 Month Notice by the landlord on July 24, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on August 22, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the landlord confirmed that they had received copies of the tenants' written evidence, I find that the tenants' written evidence was served in accordance with section 88 of the *Act*.

Although the landlord said that they provided the tenant with their written evidence in advance of this hearing, the tenant said that the only written evidence that the landlord had provided to them since issuing the 1 Month Notice was a one page document dated October 11, 2019. The tenant did confirm also receiving a two page handwritten note from the landlord at the time that the 1 Month Notice was provided to the tenants. Under these circumstances, I am considering only the October 11, 2019 letter and the two pages of handwritten notes as having been served by the landlord to the tenants in accordance with sections 88 and 71 of the *Act*. I have

disregarded the remainder of the landlord's written evidence as it was not served to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The tenants moved into this basement suite below the landlord's residence on May 2, 2019. Monthly rent is set at \$1,000.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$500.00 security deposit paid when this tenancy began.

The landlord's 1 Month Notice, a copy of which was entered into written evidence by the tenants, identified the following reason for ending this tenancy for cause by August 24, 2019:

Tenant or a person permitted on the property by the tenant has:

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

As I noted at the hearing, the corrected effective date for this 1 Month Notice is August 31, 2019. The parties confirmed that the landlord has accepted the tenants' rent payments for September and October 2019, enabling the tenants to remain in the rental unit until at least October 31, 2019.

The landlord has maintained that bottles and boxes the landlord and their son have observed either inside the rental unit or outside it lead them to believe that the tenants are involved in suspicious activities that may cause a health hazard. When the landlord's son noticed fumes inside the upper unit of this house, the landlord and/or their son notified the police, who conducted an inspection of the premises to investigate whether the tenants had constructed a drug laboratory in this basement suite. On another occasion, when the landlord's son was alone at home and was experiencing anxiety about fumes they were smelling, the landlord's son contacted the local fire department, which gained entry to the tenants' rental suite by knocking the tenants' door down to explore the landlord's son's claim that there may be a fire inside the tenants' rental unit.

In their October 11, 2019 letter, the landlord noted that their son has late stage Parkinson's disease, which can lead to hallucinations and affect his mental health. The landlord's letter also noted that their son had "subsequently been removed from his home and committed to the XX Mental Health Unit" and that their son remained in treatment at that facility and could not return home until the tenants had vacated the rental unit. In that letter and in sworn testimony by the

landlord's advocate, there was an admission by the landlord that their son suffers hallucinations, a condition that was not truly known by either the landlord or their son when the 1 Month Notice was issued. Although the visits by the police and the fire department officials revealed nothing unusual, nor did the inspections by the landlord or their son, the landlord would still like the tenants to leave as the landlord said that they "have no peace" with the tenants remaining in this rental unit, due to the suspicions that the landlord and their son have about the tenants' activities in the basement suite. The principal evidence the landlord referred to in their written evidence and their sworn testimony were two bottles of antifreeze and a box labelled muriatic acid.

The tenant testified that there is no basis whatsoever to the landlord's claim that they are using chemicals in the basement suite or that there is any drug activity happening there. The tenant said that they advised the landlord shortly after this tenancy began that they had stored two bottles of antifreeze on the property because their vehicle had leaked this antifreeze and they needed to use it in the future for their vehicle. The tenant provided sworn testimony supported by photographic evidence that the muriatic acid box was a strong cardboard box that they used to store heavy tools and that there was no muriatic acid on site. The tenant gave undisputed sworn testimony that both the police and the fire officials had advised the landlord and the landlord's son that there was nothing in the rental unit that caused concern for them and that they were not to call those departments again to conduct inspections, which could be performed on a regular basis by the landlords with the required notice to the tenants.

The tenant also noted that after the landlord issued the 1 Month Notice, they had been involved in a number of conversations with the landlord's son, who remained anxious about the fumes he was smelling and what was happening in the tenants' suite. The tenant said that they allowed the landlord's son to enter their rental suite, even leaving their door open for him to enter when they were away if he had any concerns about smells that were emanating from that suite. The tenant recognized that the landlord's son was having a difficult time and had been hospitalized in a mental health facility for treatment. They said that they no longer needed an order restricting access to the landlord or their son, nor did they require an order allowing the tenants to change the locks on their door. The tenant only asked that the landlord and their son be restricted from calling emergency vehicles in non-emergency situations, and that they be allowed to continue their tenancy.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Other than their suspicions, I find that the landlord has supplied very little evidence, either written, photographic or oral to support their claim that the tenants' actions and behaviours have seriously jeopardized the health or safety of either the landlord or anyone living in this building. The calls placed by the landlord and their son to emergency providers, which led on one occasion to the landlord's son claiming they were the landlord and prompted the fire department officials to break down the tenants' door, have identified nothing that would confirm the landlord's suspicions that anything untoward is occurring in the tenants' rental suite. The tenants' possession of antifreeze bottles and a box that formerly contained muriatic acid provides no proof to support the landlord's claim that the health of the landlord or their son have been seriously jeopardized by the tenants. While the landlord's son is undergoing serious health conditions resulting from their late stage Parkinson's disease and mental health concerns such that they are having to obtain treatment in the Mental Health Unit of a local hospital, the landlord has provided no proof that the tenants' activities are in any way responsible for these health issue.

I sympathize with the concern that the landlord and their assistant have for the health and well-being of the landlord's son and realize that the landlord's son may not be able to return home with the tenants living in the rental suite. However, these mental health concerns and hallucinations the landlord's son has been experiencing provide no basis whereby the landlord could end this tenancy for cause. Under these circumstances, I find that the landlord has provided almost nothing to substantiate that the 1 Month Notice issued in July 2019 enabled the landlord to end this tenancy for cause for the reason stated in that Notice. As I find on a balance of probabilities that the landlord has fallen far short of demonstrating entitlement to end this tenancy for cause, I allow the tenants' application to cancel the 1 Month Notice.

I cannot issue an order preventing the landlord from calling emergency services departments as there remains the possibility that a true emergency would arise some time in the future that truly requires their attendance at the tenants' rental suite to protect lives or this rental property. However, I am making an order that the landlord restrict any calls to emergency services departments to those that truly require the attendance of such services to the tenants' rental suite. The *Act* also enables the landlord to conduct monthly inspections of the premises themselves with 24 hours written notice to the tenants. Should the landlord or their son continue the practice of calling emergency vehicles for unwarranted reasons, the tenants may have legitimate grounds for seeking a monetary award against the landlord for their loss of quiet enjoyment of the property.

As the tenant said that they did not need locks changed, nor any further orders with respect to this matter, I am not issuing any further orders against the landlord.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice. The landlord's 1 Month Notice of July 24, 2019 is of no force or continuing effect. This tenancy continues until ended in accordance with the *Act*.

I order the landlord or anyone acting on the landlord's behalf to refrain from calling any emergency services departments to visit the tenants' rental suite, except in true emergency situations requiring their attendance at the tenants' rental suite. For other inspections, the landlord may conduct monthly inspections of the rental suite with 24 hours written notice to the tenants, as is required by 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 11, 2019

Residential Tenancy Branch