



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 12, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property; and
- an order to cancel a One Month Notice to End Tenancy for Cause.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlords by registered mail, however, could not recall the date of the mailing. The Landlord confirmed receipt of one package on September 15, 2019 and the other on October 11, 2019. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord testified that she served the Tenant with her documentary evidence by posting it to the Tenant's door on October 24, 2019. The Landlord submitted a signed proof of service in support. The Tenant stated that she did not receive the Landlords' documentary evidence. Based on the oral and written submissions of the Landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Landlords' documentary evidence on October 27, 2019, the third day after it was posted to the Tenant's door.

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 is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the start of the hearing, the Landlord stated that the Two Month Notice for Landlord's Use of Property dated August 31, 2019 was cancelled by the Landlord and is of no effect. As such, the hearing continued based on the Tenant's Application to cancel the One Month Notice for Cause.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a One Month Notice to End Tenancy for Cause (the "One Month Notice") dated October 4, 2019, pursuant to Section 47 of the *Act*?
2. If the Tenant is not successful, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The Tenant stated that her tenancy began on June 1, 2015. The Landlord stated that she purchased the home and therefore became the new Landlord on June 1, 2017. The parties agreed that currently the Tenant is required to pay rent in the amount of \$1,456.00 to the Landlord each month. The Tenant stated that she paid a security deposit at the start of the tenancy. The Landlord stated that a previous occupant paid a security deposit and that has since been returned to the previous occupant. As such, the Landlord stated that the Tenant has not paid a security deposit.

The Landlord stated that she served the Tenant in person with the One Month Notice on October 4, 2019 with an effective vacancy date of November 4, 2019. The Tenant confirmed having received the One Month Notice on October 4, 2019. The Landlord's reasons for ending the tenancy on the One Month Notice are;

"The Tenant has allowed an unreasonable number of occupants in the unit/site"

"The Tenant or a person permitted on the property by the Tenant has; significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk".

"The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

"The Tenant has assigned or sublet the rental unit/site without the Landlord's consent".

The Landlord testified that she served the One Month Notice in relation to several ongoing concerns;

The Landlord stated that the Tenant has not maintained the yard which is a condition listed in the addendum to the tenancy agreement. As such, the Landlord stated that she has employed someone to maintain the yard at a cost of \$120.00. The Landlord stated that she has requested that the Tenant reimburse the Landlord \$80.00 of the total cost associated with maintaining the yard. The Landlord stated that she has sent the Tenant several requests, however, the outstanding balance has not been paid.

The Landlord stated that the Tenant has also assigned a sublet in her rental unit without the Landlord's permission. The Landlord stated that she attended the rental property on October 3, 2019 at which point she saw two individuals in the rental unit who she did not recognize. The Landlord stated that the couple refused to open the door and that they stated that they lived in the rental unit. Furthermore, the Landlord provided a witness statement from her Landscaper who stated that he has witnessed several individuals aside from the Tenant coming and going from the rental unit.

The Landlord stated that the number of occupants in the rental unit is unreasonable and that it is causing electrical break to become overloaded beyond its capacity. The Landlord stated that there is also an unreasonable number of vehicles parked outside the rental property. The Landlord stated that the Tenant has been provided with one parking spot. Currently, the Landlord stated that the Tenant has a vehicle and that there is an additional vehicle that parks on the street which appears to belong to an occupant who resides in the rental unit.

The Landlord stated that the Tenant has things stored in the yard that does not belonging the yard. The Landlord stated that she has asked the Tenant on several occasions to clean up the items from the yard, however, she has not complied with the Landlord's requests. Also, the Landlord stated that the Tenant has too many of her possession stored on the back deck, which is causing a safety issue as the deck is unable to support the extra weight associated with storing all these items.

The Landlord stated that she is concerned that the Tenant will interfere with the occupant who recently moved into the basement below the rental unit, therefore is seeking to end the tenancy based on the above-mentioned infractions.

In response, the Tenant stated that she feels as though the Landlord is serving the One Month Notice in retaliation to her complaining about a previous occupant who had been smoking in the rental property. The Tenant stated that the Landlord's concerns are unfounded. The Tenant stated that she has maintained the yard to a reasonable

standard. The Tenant stated that she did not receive the Landlord's request for reimbursement of the \$80.00 until after the One Month Notice was served.

The Tenant stated that the items left in the yard belong to a previous occupant and that it is not her responsibility to remove the items relating to a different tenancy. The Tenant denies having too many items stored on the deck.

The Tenant denies subletting her rental unit, stating that she resides with her two children. The Tenant stated that at times, her children may have friends over to visit. Also, the Tenant stated that she has a student who stays with them occasionally.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause in person on October 4, 2019 with an effective vacancy date of November 4, 2019. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlord stated that she has served the Tenant with the One Month Notice in relation to several areas of concern;

The Landlord stated that the Tenant has not maintained the yard which is a condition listed in the addendum to the tenancy agreement. I find that the Landlord has provided insufficient evidence to demonstrate that the yard has not been maintained to a reasonable standard as indicated by the Tenant.

The Landlord stated that the Tenant has also assigned a sublet in her rental unit without the Landlord's permission. According to the Residential Tenancy Policy Guideline 19 (the "Policy Guidelines"); An assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant has assigned a sublet.

The Landlord stated that the number of occupants in the rental unit is unreasonable and that it is causing electrical breaker to become overloaded beyond its capacity. The Landlord stated that there is also an unreasonable number of vehicles parked outside the rental property. The Landlord stated that she attended the rental unit and spoke to

someone from behind a closed door who did not sound familiar to her and who stated that he lived in the rental unit. The Tenant stated that it was her son.

In this case, Policy Guideline 19 states that when determining whether a One Month Notice to End Tenancy for cause was issued properly, the arbitrator will examine a number of factors, including the terms of the tenancy agreement between the original landlord and the tenant, whether the agreement contains terms restricting the number of occupants or the ability of the tenant to have roommates and the intent of the parties. I find that the Landlord provided insufficient evidence to support that the Tenant has an unreasonable number of occupants in the rental unit or that the Tenant has breached a specific term of the tenancy agreement between the parties.

The Landlord stated that the Tenant has things stored in the yard that does not belong to the yard. The Landlord stated that she is concerned that the Tenant will interfere with the occupant who recently moved into the basement below the rental unit, therefore is seeking to end the tenancy based on the above-mentioned infractions.

In this case, I find that the Landlord has submitted insufficient evidence to demonstrate that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk.

According to the Policy Guideline #8; a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and, that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that the Landlord did not communicate to the Tenant that any of the Landlord's concerns listed above were a breach of a material term of the tenancy agreement, nor did she indicate that the problems needed to be fixed by a reasonable deadline or else the tenancy would end. For these reasons, I find that the Landlord did not provide adequate notice to the Tenant pursuant to section 45(3) of the *Act*.

In light of the above, I cancel the One Month Notice, dated October 4, 2019. I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated October 4, 2019 is cancelled. The tenancy will 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: November 6, 2019

Residential Tenancy Branch