



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated September 25, 2019 ("One Month Notice").

The Tenant and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Agent said she received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Agent confirmed that the Landlord had not submitted any evidence to the RTB to be served on the Tenant.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Parties discussed coming to a settlement agreement about ending the tenancy on a specific date, but ultimately, they decided to leave it to the Director to decide what the Act stipulates about this situation.

The Agent said she thought they almost had an agreement to end the tenancy in March 2020, because the Tenant had suggested February or March as possible move out dates. However, the Tenant also asked if he was bound by that if I cancel the Notice, and I told him no, that at this point he is not bound by anything. He asked if he agreed to settle on March 1 as a move-out date, if he was bound by it. I said yes, he would be bound by a settlement agreement just as a party is bound by an arbitrator's decision.

The Agent said she thought the RTB was supposed to help find a solution that met everyone's needs. I explained that no, I wasn't a mediator, but that I try to see if a settlement agreement is possible. I explained that an important part of a settlement agreement is that both parties reach it completely voluntarily; in this case, since the Tenant is not expressing his commitment to March 1st, I find a settlement agreement is not a likely option in this case. I said I would make a Decision in this matter, which I would send them as soon as possible.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- If the One Month Notice is confirmed, is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2016, with a monthly rent of \$1,150.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$575.00, and no pet damage deposit. The Parties agreed that the rental unit is a basement suite of a single-family dwelling. The Agent explained that the Landlord does not live at the residential property full time, but travels back and forth to their home country, returning to the residential property in the summer. The Agent said the Landlord spends time at the residential property periodically, as do the Landlord's parents. However, she said the Landlord's suite in the residential property is left vacant much of the time.

In the hearing, the Parties agreed that at the start of the tenancy, there were some electrical issues and issues with the dryer, and that the only access the Agent has to the Landlord's suite was through the connecting door with the Tenants' suite. The connecting door was left open so that trades people could come and go under the Agent's supervision. However, the Tenants were not authorized to enter the Landlord's suite, other than for access to a breaker panel. The Tenant said he would also go upstairs on occasion to make sure everything was alright, and to flush toilets; although, he acknowledged that he was not asked nor permitted to do that by the Landlord.

On the One Month Notice, the Landlord checked boxes indicating that the grounds for the eviction are:

- The Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; and
- the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has or is likely to damage the Landlord's property.

The Landlord also stated the following in the One Month Notice:

Tenant had entered the Landlords upper level unit without consent. Landlord claims items have gone missing along with noting evidence left in the upper unit that tenants had left behind. Tenants have admitted to daughter entering the unit without authorization. Witnesses also corroborator the claims of Tenants daughter leaving & letting friends in through the upper unit's front door.

[reproduced as written]

In the hearing, the Agent said that about a year and a half ago, the Landlord found a rose on a table in their suite. They brought it up with the Tenant, who determined that his daughter had gone upstairs and taken photographs in the Landlord's suite. The Parties agreed that the Tenants apologized profusely and that there was no further follow-up. The Agent said: "They chalked it up to her being a teenager and that things happen."

The Parties agreed that after this incident, the Landlord changed the lock of the common door joining the two units. They agreed that it has been approximately 18 to 20 months since the lock was changed.

The Agent said that this last summer, the Landlord was back and said that they found a number of items to be missing. The Agent said they noticed there were used condoms left in a room downstairs, and items missing from the master bedroom upstairs. She said they were "odd items, a side table was missing. Four imprints from the side table were still there. There was a missing picture off the wall." The Agent said, "There was also a missing purse with money in it. They wanted me to evict [the Tenant], because they didn't feel comfortable. They have since changed the locks of the connecting door. The only witness proof was from trades that said they did see [the Tenant's] daughter come in at their lunch breaks. A few people brought that to my attention."

The Agent said they have no evidence of who is responsible, but they are basing it on previous events and statements from the witness who said he saw the Tenant's daughter let her friends in the door of the Landlord's suite. The Agent said that the Landlord wants the Tenants out immediately. The Agent said she explained to the owner that it is not that simple and how the system works.

The Tenant said that he had a long talk with his daughter and that everything the Agent said was true, except he said his daughter did not take anything. He said the Landlord changed the lock 18 to 20 months ago, after the daughter admitted to having been up there taking pictures.

The Tenant said that the Landlord's parents have been back and stayed for four to five months. He said he would take the parents out, share shopping, give them rides. He said: "Everything was A-Okay." He said his daughter assured him that she had nothing to do with what the Landlord found when they came home last summer.

The Parties agreed that some of the Tenant's mail was found upstairs; however, they said the Landlord and the Tenant share a common mail box. The Tenant said he would separate the mail and put the Landlord's mail under the common door. He said the Landlord's parents may have grabbed the mail at times. "Some of it was two years old." The Tenant also noted that it was odd that the Landlord did not mention the missing items right away. He said, "If I have a place with a bag full of money, I would check it at that point. There was ample opportunity to say something."

The Agent said that what the Tenant said is, "...all pretty accurate. I fully agree with him; it wasn't a good, open communication throughout this whole incident. I wasn't aware of the time lapse between certain things. I sympathize on both ends. I want to ensure that I'm following the *[Residential] Tenancy Act*. There is no proof of the items discovered in the house. The only thing we're going off of is that they have gone up there. Maybe it wasn't [the Tenant's] daughter; maybe friends were aware the house was empty."

The Agent said: "I'm happy to compromise, if he's ready to move out - compromise on a certain date. I know he wanted a certain answer. I don't have a lot of communication with the owners, so I'm trying to look out for everybody's best interest. If we can come to a solution...."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Accusing someone of theft is a serious allegation. When a landlord serves an eviction notice for cause, the landlord has the burden of proving the claim on a balance of probabilities, pursuant to RTB Policy Guideline #32.

At the hearing, the Parties agreed that there is no persuasive evidence before me as to who is responsible for what the Landlord found in their suite or for what went missing. The Parties agree that on at least one occasion, the Tenant's daughter entered the Landlord's suite without consent; however, this was long before the Landlord alleged that items were missing from their

suite. Further, the Tenants' access to the unit was blocked for months after that incident with the daughter going upstairs.

When I consider all the evidence before me overall, I find that the Landlord has not met the burden of proving the grounds alleged on the One Month Notice. Therefore, I cancel the One Month Notice; it is not valid and is of no force or effect. I find that the tenancy continues until ended in accordance with the Act.

Conclusion

The Tenant is successful in his Application to cancel the One Month Notice. I found that the Landlord did not provide sufficient evidence to prove the grounds listed on the One Month Notice on a balance of probabilities. The One Month Notice is cancelled and is of no force or effect.

The tenancy continues until ended in accordance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 12, 2019

Residential Tenancy Branch