



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- authorization to change the locks, pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, the landlord's secretary, the tenant and the tenant's social worker attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with her application for dispute resolution via registered mail but could not recall on what date. The landlord testified that he received the tenant's application for dispute resolution but could not recall on what date. I find that the landlord was served with the tenant's application in accordance with section 89 of the *Act*.

Preliminary Issue

During the hearing the tenant withdrew her application for authorization to change the locks. The tenant's above application is therefore dismissed with leave to reapply.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began approximately 10 years ago and is currently ongoing. Monthly rent in the amount of \$927.12 is payable on the first day of each month.

The landlord testified that on September 30, 2019 a One Month Notice to End Tenancy for Cause with an effective date of November 1, 2019 (the "One Month Notice") was posted on the tenant's door. The tenant confirmed receipt of the One Month Notice on September 30, 2019.

The One Month Notice stated the following reasons for ending the tenancy:

- 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;
 - put the landlord's property at significant risk.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The details of cause stated on the One Month Notice are as follows:

Has not complied to the letter sent July 25, 2019- Excessive storage (hoarding) within the suite and storage in basement parking stall.

Tenant rekeyed the door lock and will not give new key to landlord or Strata President.

The landlord testified that the tenant hoarded belongings at the subject rental property and that the accumulation of belongings posed a fire hazard because fire fighters would not be able to gain unencumbered access to the subject rental property. The landlord

testified that he personally served the tenant a warning letter about the hoarding on July 25, 2019. The tenant confirmed receipt of the July 25, 2019 letter on July 25, 2019.

The landlord testified that the tenant breached a section of the tenancy agreement regarding reasonable health and cleanliness standards. The tenancy agreement was not entered into evidence.

The tenant's social worker submitted that the tenant was hospitalized from August 2, 2019 to September 18, 2019 which prevented the tenant from cleaning up the subject rental property after the July 25, 2019 warning letter was received. The tenant's social worker submitted that there was an accumulation of belongings at the subject rental property but that it has since been cleaned up and the tenant now has access to ongoing social supports that will prevent the problem from re-occurring. The tenant's social worker submitted that the tenant's parking stall has also been cleaned.

The social worker submitted that the tenant gave the landlord a key to the subject rental property. This testimony was not disputed by the landlord.

The landlord made no submissions regarding the keys to the subject rental property.

Analysis

I find that service of the One Month Notice was effected on the tenant on September 30, 2019 in accordance with section 88 of the *Act*.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the onus is on the landlord to prove that the tenant breached section 47(1)(d)(i), section 47(1)(d)(ii) or section 47(1)(h) of the *Act*.

Section 47(1)(d)(ii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 47(1)(d)(iii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

Section 47(1)(h) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant:

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlord did not upload any evidence in support of his testimony that the tenant's accumulation of belongings caused a fire hazard, thereby breaching sections 47(1)(d)(i) and 47(1)(d)(ii) of the *Act*. Without evidence such as photographs of the subject rental property or other supporting documentation I find that the landlord has not proved, on a balance of probabilities, that the tenant's accumulation of belongings was severe enough to seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. I also find that the landlord has not proved, on a balance of probabilities, that the tenant's accumulation of belongings put the landlord's property at significant risk.

The landlord did not enter into evidence the tenancy agreement which he alleged the tenant breached. I find that the landlord has not proved, on a balance of probabilities, that the tenant breached the tenancy agreement as he has not proved what the terms of the tenancy agreement are.

As the landlord did not provide any testimony regarding the keys to the subject rental property, I find that he has not proved, on a balance of probabilities that the tenants delay in providing him with a copy of the key, breached section 47 of the *Act*.

Based on the above, I find that the landlord has not met his onus, and the One Month Notice is therefore cancelled and of no force or effect. This tenancy will continue in accordance with the *Act*.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

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 07, 2019

Residential Tenancy Branch