



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC RP**

Introduction

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

An order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47; and

An order for regular repairs to be done to the rental unit pursuant to section 32.

The landlord was represented at the hearing by an agent, DR, her daughter. For convenience, the agent will hereinafter be referred to as the landlord. The tenant attended the hearing and was represented by an advocate, MB ("tenant"). As both parties were in attendance, service of documents was confirmed.

The landlord acknowledged being served with the tenant's Notice of Dispute Resolution Proceedings package and evidence and the tenant acknowledged being served with the landlord's evidence. I find the Notice of Dispute Resolution Proceedings package was served in accordance with section 89 of the *Act* and the documents were exchanged in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue

The tenant filed an amendment to her application to seek an order for regular repairs to be done to the rental unit pursuant to section 32. Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's one month notice to end tenancy for cause was unrelated to the tenant's other issue and dismissed it with leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

Should the landlord's One Month Notice To End Tenancy for Cause be upheld or cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and are addressed in this decision.

The landlord provided the following testimony. The rental unit is the lower suite located in a home with upper and lower suites. It is a self-contained two-bedroom unit currently being rented for \$925.00. The furnace supplying heat to both units and the air intakes are located in the lower suite. The landlord is the daughter of the homeowner and the landlord lives in the upper suite with her family.

The tenant moved into the unit on December 1, 2014. No tenancy agreement was signed between the parties. Since the commencement of the tenancy, the parties have attended no less than five previous arbitration hearings. Copies of those hearing decisions hearings were provided as evidence by the tenant. I note that the most recent hearing, on October 24, 2019 was an application for an early end to tenancy pursuant to section 56 of the *Act* that dealt with the same issues before me. The parties agree this application was dismissed because the arbitrator found that there was no reasonable circumstance to warrant an early end to tenancy when this hearing was scheduled to be heard on November 21st.

The landlord testified that on September 26, 2019 she taped a One Month Notice to End Tenancy for Cause ("Notice") to the tenant's door. The tenant acknowledges receiving it either that day or the following day. The effective date on the Notice was October 31, 2019. The reason for ending the tenancy stated on the Notice reads:

1. 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 or safety or lawful right of another occupant or the landlord.
 - Put the landlord's property at significant risk.

2. 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;
3. tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;

The landlord testified that she attempted to turn on the furnace in September 2019 and noticed foul smells coming out of the vents. She contacted the fire department on September 19, 2019 and was provided with an incident details report submitted as evidence. The report indicates that the fire crew could not initially smell anything but after removing an obstruction from the bathroom vent and turning on the furnace, they were *"overcome by an extremely foul odor coming from the basement through the vent"*. After immediately moving outside, she determined that *"the odor was not propane or natural gas smell but more likely that of rotting food/garbage."* The fire department advised the owners that the odor was not a gas their detectors were made to detect but was *"definitely unpleasant"*.

The landlord testified that prior to the fire department being called, she had a 'very reputable' company conduct a mold inspection report on the basement suite on September 13, 2019. According to the landlord, dangerous levels of Cladosporium and Penicillium/Aspergillus was detected in the tenant's suite by the project manager who conducted the inspection. The landlord submits that the Inspector recommends the following steps for Professional Remediation: "Air Scrubbing, HEPA Vacuuming, 2 step Chemical Treatment, De-Humidification" (Pg.34). The landlord also directed my attention to page 39 of the report that reads:

It was conclusive to us that due to poor care and maintenance in the suite a remediation be performed to correct the condition and return them to a livable state. Unfortunately, this would require that the suite be vacated by the tenant in order to perform the proper required remediation.

The landlord testified her family is stressed and upset by the relationship with the tenant and this has caused illness to her family. Her husband has suffered a stroke and has also developed a muscle weakness in his face due to the stressful environment. The landlord also testified that her family is allergic to mold and that the tenant is responsible for the mold issue.

The landlord also had noticed silverfish coming into the upper unit where she lives. She called an exterminator who treated the whole house for silverfish and noticed signs of

damp downstairs. The landlord referred me to from invoice the exterminator dated September 14, 2019 as evidence of this.

During the hearing, I asked the landlord what illegal activity was alleged in the landlord's Notice. She responded that there was an incident of improper parking on the lawn and flowers and harassment by the tenant's guests. No dates or times of the allegations were provided, and I was not referred to any documentary evidence by the landlord with respect to the illegal activity during the hearing.

The tenant provided the following testimony. In November of 2018, the owner of the property, the named landlord on this dispute, told her to remove the belongings she had stored in the garage, laundry room and crawlspace as her daughter was going to move into the upper unit of the house. The tenant initially had to store the various goods into one of the bedrooms as she was given short notice. She has been getting rid of her belongings when the photographs of baskets piled up was taken during her preparation to get things off the floor for the exterminator visit.

The tenant disputes the mold inspection report presented as evidence by the landlord. She points out that the report is unclear where inside the unit the samples were taken and there is no independent lab reports submitted with the air quality report. The tenant also disputes the hydrometer used by the inspector for his test as it tests for relative humidity and not moisture content. The tenant further testified that she contacted the governing body whose certifying logo is shown on the inspector's report and the governing body reports that the inspector is not listed as credentialed with them. There was previously a company with the same name who once held a membership in the organization, however that membership was expired some time ago. The tenant submits that mold inspection report submitted by the landlord is therefore unreliable.

The tenant testified that the previous arbitrator suggested they obtain their own mold assessment report which she did on October 28, 2019. The report was submitted as evidence by the tenant. The tenant directed my attention to page 4 of her report which states moisture levels were normal in all areas; visible mold growth was not observed; spore count is slightly elevated over outdoor concentrations. The basement ceiling is pinpointed in this report as the source of the water and the mold spores. The tenant points out that if there had been any dangerous levels of mold in the unit, remediation observations would have been recommended by the inspector. The tenant provided a similar example of a redacted serious mold infestation report as an example of what remediation recommendations would look like.

The tenant testified that if there is any mold in the basement, it was caused by the landlord's failure to maintain the eaves above the entrance door to the basement. The landlord disputes this argument and both referred to the photographs of the entrance to the basement during the hearing.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states:

The standard of proof and onus of proof

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.**

Rule 7.4 states:

Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In this case where both of the parties submitted an unusually great abundance of evidence to consider, for this decision, I relied upon whatever evidence was specifically presented by the parties during testimony in accordance with Rule 7.4.

The tenant acknowledges receiving the landlord's Notice the same day it was posted to her door, on September 26, 2019. She filed to dispute the Notice on October 2, 2019, within 10 days of receiving the Notice in accordance with section 47 of the *Act*.

In testimony, the landlord made a vague reference to an incident whereby she or her husband was yelled at and threatened by a guest of the tenant. No date or time was provided of the incident and the landlord did not refer me to a police report or evidence of criminal charges initiated against the tenant or her guest. I find the landlord has provided insufficient evidence to support a claim of **illegal activity** likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant (#2 of the landlord's reasons to end the tenancy for cause.)

The landlord did not elaborate on the **extraordinary** damage being done to the rental unit by the tenant (#3 of the landlord's reasons to end the tenancy for cause). No

specific damage was mentioned by the landlord other than silverfish in the unit or possibly mold. The presence of silverfish, in and of itself is not extraordinary damage. The tenant has provided evidence that contradicts the landlord's contention that the tenant caused a mold problem. While the tenant has provided the opinion from the mold inspector that says the mold issue originates from the water ingress at the front entrance to the unit, and that the mold spore count is 'slightly elevated'; the landlord has not provided evidence that sufficiently proves on a balance of probabilities that the tenant's actions have caused any mold issues. It is not the role of the arbitrator to reconcile the evidence of an applicant and establish a claim, only to determine whether the applicant has provided sufficient, clear evidence to successfully argue the claim put forward. Given the evidence provided, I do not find the landlord has proven on a balance of probabilities that the tenant has caused **extraordinary** damage to the rental unit.

The remaining reason to end the tenancy stated on the Notice was that 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 or safety or lawful right of another occupant or the landlord.
- Put the landlord's property at significant risk.

The landlord argues that there is mold and an unpleasant odor emanating from the tenant's unit, causing each of the issues shown in bullets above. As stated above, the landlord bears the onus to prove, on a balance of probabilities, the reasons to end the tenancy.

For ease, I will address the issues of the mold and the unpleasant odor separately.

To support her claim, the landlord has provided the mold inspection report dated September 13, 2019. First, this report shows in part B)i) that there is no active mold growth observed during visual inspection. Second, the tenant points out that the report is unreliable because the report doesn't include an independent lab report. Third there is no indication on the report as to where the specific samples were taken. She points out that in the introduction, the inspector was called to the residences (plural) to perform indoor air quality tests. Lastly, the tenant testified about and provided evidence that show the inspector lacks the credentials he claims to hold, casting doubt about the reliability of the report itself.

The tenant's independent mold assessment report, done on October 28, 2019 appears to refute the landlord's claim that the tenant is putting the landlord's property at significant risk or is significantly jeopardizing the landlord's safety or health by causing mold. This report clearly shows the assessment was solely done on the basement suite where moisture levels were normal in all areas, visible mold growth was not observed, and there is a slightly elevated spore count. This was attributed to water ingress through the ceiling due to a broken eave by this inspector. The tenant's report also includes an independent laboratory analysis performed and certificate. Based on the irregularities noted on the landlord's mold inspection report and the independent analysis done on the tenant's report, I find that the mold assessment report performed by on October 28, 2019 to be preferable in assessing the presence of mold and the cause of the mold. I find the landlord has not provided sufficient evidence to show the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk.

The last reason for ending the tenancy is the significant interference or unreasonable disturbance to the landlord. I take this to be the unpleasant odor in the vents the landlord testifies is caused by the tenant. Despite the tenant's testimony that there is no odor, I find the fire department's incident report dated September 19th to be a truly authentic and unbiased assessment of what they observed on that date. They *were 'overcome by an extremely foul odor coming from the basement through the vent... odor was not propane or gas but more likely that of rotting food/garbage.'* Based on this incident report, I am satisfied there exists an issue of a noxious odor emanating from the furnace.

Residential Tenancy Policy Guideline-1 provides guidance as to whose responsibility it is to maintain the furnace, reprinted below:

FURNACES

The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

The landlord did not provide any evidence as to whether they have been inspecting or servicing the furnace. It is altogether possible that there is a problem with something in the heating ducts or vents rotting or decaying thereby causing the odor. While it is possible the tenant could have caused the problem, I find it just as likely that the landlord may have inadvertently done so. It is altogether possible the landlord

accidentally dropped something into the vent from the upper unit where it had become lodged in the furnace and started to rot. I am not satisfied the landlord has provided sufficient evidence to show the tenant is the cause of the foul odor. I cannot uphold the One Month Notice to End Tenancy for Cause for the reason of significant interference or unreasonable disturbance to the landlord. (#1 of the landlord's reasons to end the tenancy for cause.)

In testimony, the landlord has not provided any indication that they have performed the furnace inspecting and servicing as described in Residential Tenancy Branch Policy Guideline-1. It is possible that replacing the furnace filters and cleaning the heating ducts and ceiling vents would alleviate the odor and/or pinpoint the source of the odors. As I have advised the parties that the tenant's application for the landlord to complete regular repairs was dismissed with leave to reapply, I am not ordering the landlord do so; however the landlord is put on notice that the landlord is required to maintain the furnace and to provide the heating facilities or services pursuant to the tenancy agreement implicitly entered into on December 1, 2014.

Conclusion

The One Month Notice To End Tenancy for Cause is cancelled and of no further force or effect. The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the *Act*.

This decision is final and binding on the parties.

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 26, 2019

Residential Tenancy Branch