



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the hearing, as were two agents and legal counsel for the Landlord (the “Landlord”). The Landlord confirmed that the Notice of Dispute Resolution Proceeding package and the Tenant’s evidence was received 13 days prior to the hearing; one day short of the requirement. However, as the Landlord confirmed receipt and that they had had a chance to review the documents provided by the Tenant, I find that the Tenant’s evidence was sufficiently served. Therefore, the Tenant’s evidence is accepted and will be considered in this decision.

The Tenant confirmed receipt of the Landlord’s evidence, however stated that two separate packages were provided to her and were served late as well as being disorganized. The Tenant stated that one package of the Landlord’s evidence was served to her mother on November 26, 2019 and then a second package of the same documents were served to the Tenant on November 27, 2019. The Tenant stated that despite being told that the packages were identical, that they were not and that the packages were highly disorganized and difficult to sort through.

The Landlord stated that they arranged to meet the Tenant on November 26, 2019 to serve their evidence, but the Tenant’s mother came instead, and they provided the package to her. However, due to this they decided to serve the Tenant with the same documents again and posted them on her door on November 27, 2019. The Landlord

confirmed that the packages were identical and that they were organized with Tabs for the Tenant to find the evidence when referenced.

Although the Tenant stated that service to her mother was not sufficient and that posting to the door is not served until 3 days later, the Tenant confirmed receipt of the package from her mother on November 26, 2019 and receipt of the second package on November 27, 2019. I do not find that the deeming provisions of Section 90 of the *Act* apply as the Tenant confirmed the date of service.

Regarding the Tenant's claim that the packages were disorganized, the Tenant was asked to speak up during the hearing should she be unable to locate evidence as referenced by the Landlord. The Tenant was provided time during the hearing to locate evidence as referenced by the Landlord and did not bring up any further issues regarding the Landlord's evidence or any evidentiary material that she did not have in front of her. As such, I find that the Tenant was in receipt of the Landlord's evidence and find that the Tenant was served at least 7 days prior to the hearing as required by the *Residential Tenancy Branch Rules of Procedure*. Therefore, the Landlord's evidence is also accepted and will be considered in this decision.

The day prior to the hearing, the Landlord submitted complaint letters into evidence dated November 24, 2019 and November 29, 2019. As these were not submitted at least 7 days prior to the hearing in accordance with the *Rules of Procedure*, this evidence is not accepted and will not be considered in this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

The scheduled hearing time was extended by approximately 30 minutes to allow both parties sufficient time to present their testimony and evidence. The hearing was ended after 90 minutes had passed. Although both parties had referenced witnesses during the hearing, no witnesses had been called by the end of the 90 minutes. However, as neither party requested an adjournment, it was assumed that both parties had the opportunity to present the testimony and evidence they wished to present and therefore the hearing was concluded at that time.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy started in April 2013. Current rent is \$765.00 due on the first day of each month. The Tenant paid a security deposit in the amount of \$362.50. The current Landlord purchased the property in December 2018 with the tenancy already in place.

A copy of the original tenancy agreement was submitted into evidence and confirms the details as stated by the parties. A second tenancy agreement was submitted into evidence set to begin on October 1, 2013 with an additional person named as a tenant. A third tenancy agreement was submitted, set to begin on January 1, 2014 with only the original Tenant named.

The Landlord testified that the One Month Notice was served to the Tenant on September 13, 2019 by posting the notice on the Tenant's door. A copy of the One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Further details were provided on the One Month Notice as follows:

June 3rd 2019 complaint mother living in unit, June 10th 2019 complaint of mother living in unit, June 19th 2019 complaint of mother living in the unit, June 22, 2019,

complaint of mother living in unit, June 27, 2019 complaint of mother living in unit, July 2nd 2019 inspection showing 2nd living area

Regarding a breach of a material term, the Landlord referenced the tenancy agreement addendum which they stated allows guests to stay up to two weeks in a calendar year before they must be added to the tenancy agreement or have permission of management to stay longer. The Landlord submitted a copy of the tenancy agreement addendum and referenced a clause regarding additional occupants which reads as follows:

Any other person(s) taking up residency with tenant(s) at a later date must be approved by management in writing. Such person(s) will then be included on the tenancy agreement. This will increase the rental payment by twenty-five (\$25.00) per month. Any other person(s) is/are guests, and may stay with the tenant(s) for a period of up to two (2) weeks during the calendar year. Any longer period of stay must be permitted in writing by management, only.

The Landlord further stated that the Tenant was notified in writing at least three times and was provided with time to resolve the issue before the One Month Notice was served. The Landlord submitted a copy of a letter to the Tenant dated June 20, 2019 in which they inform the Tenant that they are aware that her mother is residing with her. In the letter, the Tenant is reminded of the tenancy agreement addendum clause and the Landlord requests that the Tenant's mother vacates the rental unit or completes a tenancy agreement application. Through the letter the Landlord provided until June 28, 2019 for the Tenant to advise them as to which route she would like to take.

The Landlord submitted a copy of an email response from the Tenant dated June 23, 2019 in which the Tenant denies that her mother has moved into the rental unit.

In a second letter to the Tenant dated July 4, 2019 from Landlord's legal counsel, the Tenant was notified that the Tenant's mother has been residing with her since approximately June 1, 2019. The letter notes that the Tenant's mother was present during an inspection of the rental unit on July 2, 2019 and that an additional bed was seen set up in the living area of the rental unit. Through the letter, the Tenant is notified that the Landlord requires the Tenant's mother to vacate immediately or complete an application for tenancy. In the letter the Landlord states their agreement to not increase the Tenant's rent should her mother be approved as a Tenant. It is requested that the Tenant advise the Landlord as to which option she will be taking by July 12, 2019.

The letter of July 4, 2019 also references disturbance to other tenants. The Tenant is cautioned that the tenancy may end through a One Month Notice regarding disturbance to others, an unreasonable number of occupants in the rental unit and breach of a material term. It is stated that the Tenant must immediately correct her behaviour, or a One Month Notice will be issued. It is also noted that should the Tenant wish to end her tenancy, they request notification of a mutual agreement by July 12, 2019. A copy of the tenancy agreement from January 2014 was included with the letter, along with a copy of the tenancy agreement addendum.

The Landlord included an email response from the Tenant dated July 10, 2019 in which the Tenant denies the accusations and asserts that some of the complaints against her were fabricated or canvassed from other residents of the property.

In a third letter sent from the Landlord's legal counsel dated July 31, 2019, it is noted that the Tenant's mother has spent more than two weeks in the rental unit in this calendar year. The Tenant is notified that her mother must go through the tenancy application process or will be unable to be added as a tenant. The Landlord requests the information for the tenancy approval process no later than August 9, 2019 or confirmation from the Tenant by August 9, 2019 should she wish to sign a mutual agreement to end the tenancy. The Tenant is again cautioned that a One Month Notice may be served due to unreasonable disturbance, regarding the number of occupants in the rental unit, and/or breach of a material term of the tenancy agreement.

In an email response from the Tenant dated July 31, 2019, the Tenant states that she explained to two agents for the Landlord (in February and June 2019) that her mother sleeps over periodically and that the agents did not have any issue with this. In the email the Tenant further states that she has the right to have overnight guests without restrictions from the Landlord and that her mother has not stayed for two consecutive weeks since June 2019.

The Landlord submitted evidence in support of their claim that the Tenant's mother stays at the rental unit for more than two weeks in a calendar year. This includes multiple complaints from other residents indicating that they have seen the Tenant's mother on the property frequently, including accessing the building with her own key. They also submitted photos showing a bed/cot set up in the living area of the rental unit, and security camera footage of the Tenant's mother entering the lobby of the residential property on multiple occasions.

The Landlord also referenced an incident that occurred in April 2019 in which there was a serious fire in the building and the residents were temporarily relocated to a hotel. The Landlord stated that the Landlord paid for the Tenant to stay in a hotel and that the Tenant's mother stayed with her during this time. The Landlord submitted correspondence with the hotels which note that there were two guests staying in the Tenant's hotel room.

The Tenant testified that her mother was with her at the time of the fire and therefore came with her to the hotel. She also noted that it was only supposed to be for a few days, although the hotel stays ended up being a lot longer. The Tenant also noted that she was sick and had asked her mother to stay with her to help out. The Tenant stated that her mother lives with the Tenant's uncle and submitted a letter from her uncle dated October 3, 2019 in which the Tenant's uncle states that the Tenant's mother lives with him except for two days most weeks when she stays with the Tenant.

The Tenant questioned the legitimacy of the complaint letters submitted by the Landlord as she stated that one resident in particular is attempting to make vacancies in the building so as to move family and friends in. The Tenant also noted additional issues that have arisen between herself and the Landlord since the fire, including some issues for which the parties have another dispute resolution proceeding scheduled. The Tenant indicated that the Landlord may be attempting to end her tenancy due to her filing a claim and the issues that have arisen.

The Tenant stated that her mother was previously on her tenancy agreement as she was going to stay for a period of more than two weeks, however, her mother was taken off the agreement once this arrangement ended. She agreed that three tenancy agreements were submitted into evidence by the Landlord but stated that two are missing, including the one where her mother was listed as a tenant.

The Tenant stated that she received the three warning letters from the Landlord. She stated that she did not put her mother on the tenancy agreement as the Landlord was requesting private information from her mother which they were not comfortable with due to previous privacy concerns with the Landlord.

The Tenant testified that she is aware of the rule regarding a guest not staying more than two weeks but stated her position that this was two weeks in a row, not two weeks total per year. The Tenant questioned how two weeks total in a year is fair given that

people may have significant others or friends/family staying. The Tenant stated that the past tenancy agreements show her understanding of the rule as she has had occupants on the tenancy agreement in the past and taken them off after they were no longer staying with her.

The Tenant stated that she has advised the Landlord previously regarding her mother staying at the rental unit regularly and that it has never been an issue. She noted that she therefore understood that they had a verbal agreement and that there was no issue with her mother's short-term visits. The Tenant also stated that she had previously clarified that the rule was regarding two consecutive weeks, not two weeks total.

The Tenant testified that her mother stays with her up to two nights per week, most weeks. She also testified as to personal health issues and stated that as the reason why she provided her mother with a key or asks her mother to get the mail. The Tenant submitted into evidence an affidavit dated November 21, 2019 signed by her mother. In the affidavit, the Tenant's mother notes that she resided in the rental unit from October 2015 to February 2016 and was added to the tenancy agreement during that time. The Tenant's mother further writes that she was removed from the tenancy agreement on March 1, 2016 and that at this time was allowed by the Landlord to stay 2 nights per week, occasionally up to 3.

The Tenant stated that the tenancy agreement addendum was written at the start of her tenancy in 2013 and the terms were clarified by the landlord at that time. She stated that this issue had never previously been brought forth and therefore the Tenant was clear that she understood the tenancy agreement terms correctly.

The Tenant submitted a signed affidavit dated November 21, 2019. In the affidavit signed by the Tenant, she states that she had an updated tenancy agreement dated March 1, 2016 in which there were provisions regarding overnight visits from her mother and that her mother could stay with her up to 3 nights per week.

The Landlord stated that the Tenant was aware that the addendum clause is regarding guests staying a total of two weeks each year, as the Tenant was also advised of this in the three warning letters sent to her. They stated that as the Tenant admitted that her mother stays with her an average of two nights per week, this is well beyond two weeks total in a calendar year. The Landlord also stated that the hearing was the first time that the Tenant brought up the argument that the rule was two consecutive weeks.

The parties discussed settlement but were unable to reach an agreement.

Analysis

As stated in Section 47(4) of the *Act*, a tenant has 10 days to apply to dispute a One Month Notice. As the One Month Notice was posted on the Tenant's door on September 13, 2019 and the Tenant applied on September 21, 2019, I find that the Tenant applied within the allowable timeframe. Therefore, the matter before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities that the reasons for the notice are valid. Therefore, the Landlord bears the burden of proof in this matter.

The One Month Notice was served to the Tenant due to a breach of a material term of the tenancy agreement, pursuant to Section 47(1)(h) of the *Act*. The Landlord provided testimony and evidence regarding a tenancy agreement addendum in which a tenant is allowed a guest for two weeks in a calendar year or they must be added to the tenancy agreement.

I note that although the Landlord presented testimony and evidence regarding concerns with the behaviour of the Tenant and her mother, I do not find this to be relevant to the dispute over the One Month Notice. Instead, the only reason for ending the tenancy as stated on the One Month Notice was in reference to a breach of a material term of the tenancy agreement.

Regarding a material term, I refer to *Residential Tenancy Policy Guideline 8* which provides in part the following explanation of 'material terms':

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 determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another.

The parties were not in agreement as to whether the Tenant had breached a material term of the tenancy. The Landlord stated that the tenancy agreement addendum was clear that the Tenant may not have a guest stay for more than two weeks per calendar year and that by the Tenant's mother staying approximately two nights per week, the Tenant is in breach of this term.

The Tenant did not dispute that her mother stays with her regularly and based on the testimony and evidence of both parties, I do not find that this is what is in dispute. I accept the letter from the Tenant's uncle and mother, both of which support the Tenant's testimony that the Tenant's mother stays approximately two nights per week. However, the Tenant stated her belief that a guest is not allowed to stay for more than two weeks *consecutively* without being added to the tenancy agreement and therefore she is not in breach of the term of the tenancy agreement addendum.

While the Landlord stated that the hearing was the first time that the Tenant was bringing up her understanding of the consecutive requirement, I find evidence before me that this was the Tenant's belief as stated. For example, in the Tenant's response email dated July 31, 2019, the Tenant indicates that her mother does not live there and has not been staying more than two consecutive weeks, which would support her testimony that this was her understanding of the tenancy agreement clause.

The Landlord also stated that their warning letters to the Tenant were clear as to the term that the Tenant was in breach of. However, upon review of the warning letters and the Tenant's email responses, I find that the letters from the Landlord indicated to the Tenant that an "additional tenant" was residing in her rental unit, which the Tenant denied.

I find it understandable that the Tenant would have denied having another tenant in her rental unit given her understanding that a guest may stay up to two weeks

consecutively. In the responses from the Tenant, she denies that her mother has moved in with her.

The Landlord's warning letters indicate that the Tenant's mother has been living with her since July 1, 2019. While the evidence of the Landlord includes complaint letters regarding the presence of the Tenant's mother on the property as well as video evidence of the same, I do not find sufficient evidence to establish that the Tenant's mother is staying with the Tenant more than two weeks in a row as stated by the Tenant and supported by the Tenant's evidence. Therefore, I am not satisfied that the Tenant's mother has moved in with her. I also note that the Tenant's mother may be in the rental unit at various times (such as during an inspection by the Landlord) without staying over or being considered an occupant.

As stated in Policy Guideline 8, a material term is one in which the parties agree on the importance and in which even a trivial breach would end the tenancy. However, upon review of the clause in the tenancy agreement addendum, I find the terms to be vague and unclear as to how long a guest may stay in the rental unit before they must be a party to the tenancy agreement. As further evidence as to the vagueness of the term, the parties clearly do not agree on the meaning of the term in the agreement, as evidenced by their conflicting testimony as to the understanding of the term.

I also note that the Tenant signed the tenancy agreement with this addendum at the start of the tenancy which was prior to the current Landlord purchasing the property. Therefore, I find it reasonable that the Tenant may have had a different understanding of the term upon signing the agreement and as possibly discussed with the previous landlord. Although the Landlord stated that the term was clarified through their letters, I do not find this to be the case.

Therefore, due to the disagreement between the parties as to the meaning of the term of the tenancy agreement addendum, and the Tenant's understanding which may have been clarified upon originally signing the agreement, I am not satisfied that a guest staying more than two weeks total in a year is a material term of the tenancy. As stated, I am also not satisfied that the Tenant's mother is staying more than two weeks consecutively.

I also note that while the Landlord brought up concerns with the Tenant's mother staying with her at the hotel following a fire in the building, I find this to be a unique issue that is separate from the tenancy at the rental unit. I do not find that whether or

not the Tenant's mother stayed with her at the hotel following a traumatic event is representative of whether the Tenant has breached a material term of the tenancy agreement.

Accordingly, as I am not satisfied that the term in question is a material term of the tenancy agreement, the Tenant's application to cancel the One Month Notice is successful. The One Month Notice dated September 13, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenant was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant may deduct this amount from the next monthly rent payment as recovery of the amount owed.

Conclusion

The One Month Notice dated September 13, 2019 is cancelled and of no force or effect. The tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from the next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: December 10, 2019

Residential Tenancy Branch