



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRAMOORE ENT. and [tenant
information suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL, CNC, LRE, MNDCT, OLC, PSF, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- an order of possession for cause pursuant to section 47 and 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant applied for:

- cancelling a one month notice for cause pursuant to section 47 of the *Act*;
- an order restricting the landlords right to enter or restrict pursuant to section 70 of the *Act*;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the *Act*;
- an order to provide services or facilities required by the tenancy agreement or law pursuant to section 62 of the *Act*;
- monetary order for damage or compensation pursuant to section 67 of the *Act*;
- authorisation to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties, the landlord (JKM) and the tenant (MDW) attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenant acknowledged receipt of the landlord’s Notice of Hearing and Application for Dispute Resolution and the landlord acknowledged receipt of the tenants’ Notice of

Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary issue: Rules of Procedure 2.3

Rules of Procedure 2.3 states:

At the hearing I ordered, pursuant to Rule of Procedure 2.3, that the tenants' claim be severed. Rule 2.3 requires that claims in an application be related to each other and provides arbitrators with the discretion to dismiss unrelated claims.

I find that the tenants' claims regarding complying with the *Act*, providing services, facilities, order for repairs to the rental unit and monetary compensation are not sufficiently related to the claim dealing with an order to cancelling.

As such, I dismiss the tenant's other claims with leave to reapply.

Issues- Landlord

Is the landlord entitled to an order of possession pursuant to sections 47, 55 of the *Act*?
Is the landlord entitled to recover the filing fee pursuant to section 72 of the *Act*?

Issues – Tenant

Is the tenant entitled to an order for the cancellation of the landlord's One Month Notice pursuant to section 47 of the *Act*?
Is the tenant entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord issued the One Month Notice on October 18, 2019. The tenant testified that the notice was posted on her door on the same day it was issued. The One Month Notice had an effective date of November 30, 2019. The grounds stated for ending the tenancy were the following:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Adversely effected the quiet enjoyment, security, safety or physical well being of another occupant.

The landlord testified that the majority of residents in the building were “elderly residents” and this significantly interfered and disturbed the residents in the remaining units.

The landlord testified that (MDW) and tenant’s partner (LW) significantly interfered with or disturbed the other tenants in the building by “arguing and fighting”. The landlord further testified that the police were called to the rental unit on November 19, 2019. The parties disagreed as to whether the landlord or the tenant called the police.

The tenant (MDW) denied there were arguments and fighting in the rental unit. He testified the police did take his partner (LW) overnight, for her safety and concern. Tenant (MDW) denied there were complaints from other residents in the building.

Tenant (MDW) testified that his partner (LW) had a disability resulting from a brain injury and at times was unable to control her actions. (MDW) testified that (LW) would shout and raise her voice due to her condition but denied that members of his family including his partner (LW) disturbed other residents in the building.

Landlord testified that the tenants were in rent arrears. The tenant (MDW) responded that repairs were required to be undertaken on the rental unit. I informed the parties that they would have to make applications to the Residential Tenancy Board.

During the hearing, I offered the parties an opportunity to settle their dispute by way of mutual agreement. The landlord testified that she was seeking an immediate order of possession. The tenant (MDW) testified that he had attempted to find suitable accommodation but was unable to do so due to the limited supply of rental units in the Hope region.

Analysis

A tenant may dispute a One Month Notice pursuant to section 47(4) of the *Act* by making an application for dispute resolution within 10 days after the date the tenant receives the notice. The tenant disputed the landlord’s notice on October 27, 2019 in accordance with the *Act*.

When a tenant disputes a notice, pursuant to the Rules of Procedure - Rule 6.6, the landlord has the onus of establishing proof, on the balance of probabilities, that the notice to end tenancy is valid. This means that the landlord must prove, that is more likely than not, that the facts stated on the notice to end tenancy are correct.

I find that the evidence and testimony given by both parties was a reliable and represented version of events, that were equally probable however the test that I have to apply is on the balance of probabilities which is to say, that it is more likely than not that based on the evidence and testimony that events occurred in a certain way as opposed to another.

I have reviewed the emails and a letter from a resident in the building and I am unable to give weight to this evidence as the letter is not signed. Pursuant to Rule 7.17 I find this evidence has no weight and shall not be considered.

I have listened to the testimonies of the parties, I find that the landlord has not met the burden of proof in this matter. For these reasons, I find that the landlord has failed to provide sufficient evidence to prove on the balance of probabilities any of the grounds set forth in the notice to end tenancy. Accordingly, I grant the tenant's application to cancel the One Month Notice.

The One Month Notice is cancelled and is of no force or effect and the tenancy shall continue until ended in accordance with the *Act*.

Conclusion

I grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

As the tenant has been successful in this application, I grant him the \$100.00 filing fee to be deducted from the rent for the month of January 2020.

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 13, 2019

Residential Tenancy Branch