



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC LRE OLC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they were served with the 1 Month Notice dated October 2, 2019 though the parties could not recall the date of service. The landlord confirmed receipt of the tenant's application for dispute resolution dated October 21, 2019 and evidence. The landlord testified that they had uploaded the evidence but had not served it on the tenant. Based on the testimonies I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the Act. I find that the tenant was not served with the landlord's materials.

In accordance with Residential Tenancy Rule of Procedure 3.15 a respondent must serve the applicant with the evidence they intend to rely on at the hearing no less than seven days before the hearing. As I find that the tenant has not been served by the landlord, and I find that it would be prejudicial and contrary to the principles of

procedural fairness to consider evidence that has not been served, I exclude all of the landlord's evidence.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Should the landlord's right to enter the rental unit be restricted?

Background and Evidence

This periodic tenancy began in February, 2019. Monthly rent is \$1,550.00 payable on the first of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a detached home. While the tenant recalls signing a tenancy agreement, they say they have not been provided with a copy by the landlord.

The landlord issued a 1 Month Notice dated October 2, 2019. The reasons provided on the notice for the tenancy to end are:

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *put the landlord's property at significant risk.*

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;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property

Tenant has not done required repairs of damage to the unit

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlord explained that the tenant has hung up pictures, installed a television on the wall and have made other modifications to the rental unit which they consider to constitute extraordinary damage. The landlord said that the tenant has an above ground pool in the yard which they believe poses a significant risk of water damage to the property should it burst sending its contents flooding out.

The landlord said that the tenant has entertained guests, some of whom have stayed at the rental unit. The landlord testified that they believe the tenant's guests are unreasonable occupants of the suite. The landlord also said that they have received some complaints from neighbors about the noise level of the tenant and their guests.

The tenant disputes the landlord's characterization of their actions as grounds for this tenancy to end. The tenant testified that the landlord or their family members regularly enter the yard of the property without notice. The parties disagreed on whether use of the yard was included in their tenancy agreement. The tenant submits that they are entitled to exclusive use of the property including the backyard.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. In the present case the parties confirm that the tenant was served with a 1 Month Notice dated October 2, 2019 but were unable to recall the precise date when the notice was served. The tenant filed their application for dispute resolution on October 21, 2019. In the absence of sufficient evidence showing the tenant was outside of the statutory timeline, I accept that the tenant filed their application to dispute the 1 Month Notice in accordance with the *Act*.

When a tenant applies to dispute a 1 Month Notice the onus lies with the landlord to show on a balance of probabilities that the tenancy should end for the reasons indicated on the notice. I find that the landlord has not met their evidentiary onus. The landlord gave evidence that some of the items indicated on the 1 Month Notice are not relevant. While they have indicated that there has been non-compliance with an order under the legislation, the landlord gave evidence that no order has been previously issued.

Much of the landlord's complaints are patently ridiculous and indicative of the lack of comprehension of what is reasonable. The landlord testifies that the tenant is required to inform the landlord prior to hanging up photographs on walls or installing a television.

I find the landlord's insistence on this point to be unreasonable and impractical. I do not find that the act of putting up decorations on walls or a television to constitute damage to the rental unit. Based on the evidence I find that the tenant has conducted themselves in the manner of a reasonable occupant of a rental unit and their actions have not caused damage that would give rise to a basis to end the tenancy.

Similarly, I find the tenant's actions of having guests, family members and relatives attend at the rental unit, sometimes staying overnight does not constitute additional occupants in the rental unit. A tenant is at liberty to have guests and the landlord does not have the authority to restrict the tenant's ability to host people. I find that there is insufficient evidence that there are an unreasonable number of occupants that gives rise to a basis to end the tenancy.

I find the landlord's suggestion that having a pool in the yard of the rental property constitutes a significant risk to be patently ridiculous and not supported in the evidence. I find little evidence that the landlord's concerns are anything more than their paranoid imagination as there is no indication that the pool poses any risk to the property.

I find the landlord's evidence that they have received complaints about the noise level of the tenant to be unpersuasive. The evidence of the parties is that the landlord issued a single letter indicating that it was the final warning after receiving a complaint from a neighbor regarding noise levels. I find the landlord's evidence on this point to be vague and unconvincing. While I accept that there has been a complaint by a neighbor regarding noise levels, I do not find that there is evidence of the validity of the complaint, that the issue was not resolved or that it was brought to the tenant's attention prior to the landlord issuing a 1 Month Notice. Based on the evidence I do not find that there has been any unreasonable disturbance or interference that would give rise to an end of this tenancy.

I find that both individually and cumulatively the landlord has not shown that there is a basis for this tenancy to end. As such, I allow the tenant's application to cancel the 1 Month Notice. This tenancy will continue until ended in accordance with the Act.

In the absence of a written tenancy agreement setting out that the tenant is not entitled to exclusive use of the rental property, including the yard, I do not find the landlord's assertion that they may enter the yard without notice to be sufficiently supported. I find, in accordance with the normal definition of residential property, that the tenant is entitled to exclusive use of the rental building and the adjoining yard on which the building is

situated. Accordingly, I find that the landlord is bound by the provisions of the Act pertaining to the restrictions on their right to enter the rental unit. I do not find it necessary to issue a specific order, but will note that the landlord is bound by the Act and any further breaches by entering the rental unit, except as is permitted, may be grounds for a monetary award against the landlord.

I accept the evidence of the parties that the landlord has not provided the tenant with a copy of the signed tenancy agreement in contravention of section 13(3) of the Act. I order that the landlord provide a copy of the tenancy agreement to the tenant.

I accept the evidence of the parties that the monthly rent for this tenancy is \$1,550.00 and that the landlord took a security deposit of \$1,000.00. Pursuant to section 19 of the Act, a landlord may not require a security deposit that is greater than $\frac{1}{2}$ of one month's rent. I find that there has been a breach of the Act on the part of the landlord who demanded and accepted a security deposit greater than $\frac{1}{2}$ of a month's rent. I find the landlord's explanation that they demanded such an amount due to the tenant having a young child to be abhorrent reasoning worthy of rebuke. The landlord has exploited a vulnerable tenant due to their family situation in a flagrant breach of the Act.

Section 19(2) provides that an overpayment of security deposit may be deducted from rent. I find it appropriate to order that the tenant may make a one-time deduction of \$225.00 from their next scheduled rent payment. The security deposit for this tenancy is reduced by that amount to \$775.00, the equivalent of $\frac{1}{2}$ of one month's rent of \$1,550.00 as set out under the Act.

As the tenant was successful in their application they may also recover the \$100.00 filing fee for this application from the landlord.

Conclusion

The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The landlord is ordered to provide a copy of the tenancy agreement for this tenancy to the tenants.

The security deposit for this tenancy is reduced to \$775.00.

I issue a monetary award in the tenant's favour in the amount of \$325.00 for the return of the overpaid security deposit and filing fee. As this tenancy is continuing the tenant is authorized to make a one-time deduction of \$325.00 from their next scheduled rent payment in full satisfaction of their monetary award.

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 6, 2019

Residential Tenancy Branch