



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, LAT, RP

Introduction

In this dispute, the tenant sought to cancel a One Month Notice to End Tenancy for Cause (the “Notice”), an order for regular repairs, and an order authorizing a change of locks, pursuant to sections 47, 32 and 62, and 31 and 70, respectively, of the *Residential Tenancy Act* (the “Act”).

The tenant applied for dispute resolution on October 25, 2019 and a dispute resolution hearing was held on December 17, 2019. The tenant, the landlord, the tenant’s advocate, and the landlord’s lawyer attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by either party.

While I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred I have only considered evidence relevant to the issues of this application.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord’s notice to end tenancy complies with the Act.

Issues

1. Is the tenant entitled to cancel the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to an order for regular repairs?
4. Is the tenant entitled to an authorization to change the locks?

Background and Evidence

As a preliminary matter counsel for the landlord requested that the Notice be amended to contain the tenant's last name, which was accidentally omitted from the Notice. The tenant's advocate did not object. I have accordingly amended the Notice to reflect the tenant's full legal name. In addition, the tenant's first name is properly reference on the style of cause of this Decision to reflect the tenant's legal first name.

On October 22, 2019, the landlord issued the Notice by serving it by way of attaching it to the door of the rental unit, pursuant to the Act. The Notice, a copy of which was submitted into evidence, indicated that the tenancy was ending November 22, 2019 and the reason it was ending was (as indicated on page two of the Notice) as follows:

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.

Under the Details of Cause(s) section of the Notice the landlord wrote that:

The law states: when the tenant changes the door knobs & locks on the suite doors without the landlord's permission the person is subject to eviction

The landlord testified that the tenant changed the locks and doorknobs on the rental unit and the door accessing the rental unit without his permission. The landlord told the tenant to get the original doorknobs "back on there," but the tenant refused to do so. And so, the landlord issued the Notice.

There was no further discussion about the issue, and the tenant did not give the landlord a spare key until the tenant spoke to his advocate. Recently, the tenant has reinstalled the original knobs and locks back on, but no longer has the keys.

The tenant testified that he asked the landlord for the keys twice, but the landlord failed to provide copies of the keys. He first asked the landlord for a copy of a key about a year ago, and then more recently about two months ago, to no avail. As a result of not being able to obtain a copy of the keys, the tenant has been forced to leave his doors unlocked to the detriment of his safety and security. He "has to leave the doors open." There was also a padlock that was attached to one of the doors.

In their final submission the tenant's advocate argued that while there has been changing of the locks and so forth there "has been no illegal activity" as stated in the Notice.

In their final submission landlord's counsel argued that the issue comes down to the tenant changing the rental unit's locks without the landlord's consent or even asking for consent to do so. He reiterated that "security is important" to the landlord.

Finally, he submitted that while the other boxes (that is, reasons for ending a tenancy) on the Notice are not ticked off that I, as the arbitrator, have the authority or jurisdiction to uphold any of those grounds in order to end the tenancy. Specifically, that I may end a tenancy based on the tenant's failure to obtain consent to change the locks.

Analysis

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.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. In this case, the Notice was issued under subsection 47(1)(e) of the Act which 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 engaged in illegal activity that (i) has caused or is likely to cause damage to the landlord's property [. . .]

In this dispute, the landlord has provided no evidence, either documentary or oral testimony, to establish that the tenant (or a person permitted on the property by the tenant) engaged in illegal activity that resulted in damage to the landlord's property. Subsection 47(1)(e) of the Act requires that there be both illegal activity *and* resulting damage to the property.

While the changing of locks without a landlord's permission is prohibited under section 31(2) and (3) of the Act, and a landlord is entitled to recourse for such breaches, this is not the reason stated in the Notice for ending the tenancy.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the Notice was issued. As such, I hereby cancel the Notice issued on October 22, 2019; it is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

Both parties rightly believe that security is important. The landlord wants security of his property and the tenant wants security of his rental unit and his personal property. It is important for both parties to work together to reach this common goal.

Accordingly, while I dismiss the tenant's application for an order for regular repairs and a lock change authorization (and the tenant's advocate noted that these were sought to address the lock change issues), I order the landlord, pursuant to section 62 of the Act, to take one of the following actions within 5 days of the receipt of this Decision:

1. the landlord must provide a copy of any keys to the tenant that the tenant requires to access the rental unit;
- or
2. the landlord must change the locks and provide a copy of the keys to the tenant that the tenant requires to access the rental unit.

This order is issued on the understanding that, as indicated by the tenant's advocate, the tenant shall forthwith remove the padlock.

Conclusion

I order that the Notice is hereby cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

I dismiss the tenant's application for regular repairs and a lock change authorization with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 17, 2019

Residential Tenancy Branch