Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding POLO HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

In this application, the tenant disputes a One Month Notice to End Tenancy for Cause ("Notice") pursuant to s. 47 of the *Residential Tenancy Act* ("Act").

I note that s. 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy, I must decide 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.

The tenant applied for dispute resolution on November 25, 2019 and a dispute resolution hearing was held on Monday, January 20, 2020. The tenant, the tenant's advocate, and the landlord attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Preliminary Issue: Evidence and Submissions

While I have reviewed evidence submitted that met the *Rules of Procedure,* under the Act, and to which I was referred, I have only considered evidence relevant to the issues of this application. At the outset, while the parties spoke at length about matters involving heat and smoke detectors, these topics did not form any part of the Notice; as such, those matters will not be considered further. Further, I will not address any issue concerning the late, or non, payment of rent.

It should be noted that the tenant strenuously requested that I permit him to send in written submissions after the hearing, on the basis that it would allow him to better articulate his position. However, I note that the tenant submitted his application on November 25, 2019 and has ostensibly had a legal advocate for almost two months. In

other words, there has been a more-than-reasonable time period for the tenant and his legal advocate to submit necessary submissions or relevant evidence. For this reason, and to ensure compliance and consistency with the *Rules of Procedure,* I refused to accept any additional submissions from the tenant. It should be added, however, that I found the tenant's articulation of his position to be clear, logical, and straightforward.

Issues

1. Is the tenant entitled to an order cancelling the Notice?

2. If not, is the landlord entitled to an order of possession of the rental unit?

Background and Evidence

The landlord testified that the tenancy began sometime in 2017, and that monthly rent in the "single room occupancy," or SRO, rental unit is $600.00. While there may have been a written tenancy agreement in place at the time the tenancy began, the landlord did not have, or provide, a copy of the agreement.

On November 22, 2019, the landlord issued the Notice, in person, on the tenant. A copy of the Notice was submitted into evidence and referred to. The grounds on which the Notice was issued were: (1) the tenant has allowed an unreasonable number of occupants in the rental unit; and (2) the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Under the *Details of Cause(s)* section on page two of the Notice it reads:

1) Tenant's girlfriend moved in without permission or notification. Subject unit is a 10'X12' SRA room.
2) Tenant has not complied with pest control profession's directions.
3) Tenant has taken a fridge from a vacant room without permission and now has two fridges in his room.

The landlord testified that the SRO only allows one person in the room, and that the municipal bylaws require this to be the case at all times. He testified that there are two people in the rental unit, instead of just the tenant.

The landlord testified that a pest control company could not get access to the rental unit as required. However, during both his testimony and in response to the tenant's

advocate's cross-examination (and submissions), it appeared that the pest control access issue was resolved before the Notice was issued.

When the landlord visited the rental unit after the pest control access issue was resolved, he noticed that the room had not one, but two, fridges. He testified that the tenant told him that the previous property manager had said it would be OK if the tenant borrowed a second fridge. However, the landlord stated that the tenant had at no time obtained permission to take a second fridge from another room.

The landlord referenced that he had submitted the following documentary evidence: a warning letter regarding the cluttered rental unit, a letter from the pest control company about the access issue, a letter from the previous manager about the fridge, and photographs of the unrelated smoke and heat detector issues. I have reviewed these.

The tenant testified that it is his wife, not a girlfriend, who lives with him in the rental. He stated that the landlord has been aware of this since 2018. He also said that he would have never taken a fridge without asking for permission and said that he is of good character. He spoke of an excellent relationship that he has had with the landlord over the time he has been there. He disputed that he took the fridge without permission, he disputed that the pest control issue is an existing problem, and he disputed that he is prohibited from having his wife cohabit with him.

In her final submissions the tenant's advocate argued that the landlord presented no evidence that the tenancy agreement restricts the number of people, or, that the landlord has established there is an unreasonable number of occupants. Nor, the advocate stated, has the landlord proven that there is a breach of any municipal bylaw.

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 was issued.

The grounds on which the Notice was issued were subsection 47(1)(c) of the Act which permits a landlord to end a tenancy when “there are an unreasonable number of occupants in a rental unit,” and, subsection 47(1)(d)(i) where “the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.”

Regarding the first ground, while the landlord testified that the rental unit is an SRO – which are restrictive in the number of occupants that may reside therein — no corroborating evidence, such as a written tenancy agreement, was provided to establish that the tenant was prohibited from having another occupant or even a guest in the rental unit. In the absence of something definitive, like a written tenancy agreement where the terms would spell out that restriction, and where both parties dispute a restrictive clause of the tenancy, I cannot find that the landlord has met the burden of proving that there was an unreasonable number of occupants in the rental unit. The landlord did not provide any cogent argument or basis in law as to why two people (a husband and wife) is an “unreasonable” number of occupants in a small room.

I am not unaware of the socioeconomic benefits that SROs provide to their tenants, but without any evidence (beyond conflicting positions of the landlord and the tenant) that the rental unit is, in fact, an SRO, I cannot end a tenancy based on a breach of a tenancy agreement that cannot be proven.

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 first ground on which the Notice was issued.

Regarding the second ground, while the landlord testified about pest control issues and a second refrigerator, he did not provide any evidence that the tenant significantly interfered with, or unreasonably disturbed, another occupant or the landlord of the residential property.

A plain language reading of significant interference or unreasonable disturbance means activities that go to disturbing or interfering the daily activities of another occupant. For example, a tenant who parties hard throughout the night, waking up his neighbors, could be found to significantly interfering with other occupants. But removing a refrigerator from a vacant room, or not clearing clutter from his room, does not, I conclude, significantly interfere with or unreasonably disturb the landlord or another

occupant. Certainly, if the tenant had removed the fridge from another occupant's rental unit then *that* would have likely been a significant interference. But I cannot find, based on the evidence before me, that any other occupant of the 20-unit building was or has been either interfered with or disturbed, significantly or unreasonably or otherwise.

And, while the pest control issue may have caused a delay in pest control operations, there is no evidence that the tenant's clutter and the ensuing difficult of conducting a pest control subsequently caused significant interference or unreasonable disturbance of any other occupant or, for that matter, the landlord. Certainly, it is a nuisance for a landlord to have to call the pest control company back for another visit, but this cannot be considered significant interference.

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 second ground on which the Notice was issued.

Conclusion

The tenant's application is granted.

I hereby order that the Notice, issued on November 22, 2019, is cancelled and of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me under subsection 9.1(1) of the Act.

Dated: January 20, 2020

Residential Tenancy Branch