



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOMERSET MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by the landlord's agents P.B. and J.B. herein referred to as "the landlord". The tenant advised at the outset of the hearing that the other tenant named in her Application for Dispute Resolution was scheduled for his own separate hearing and therefore her Application was amended to remove the other named tenant.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's notice of dispute resolution proceeding package and evidence. The landlord did not submit any evidence in this matter. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue - Procedural Matters

Section 55 of the *Act* requires that when a tenant submits an Application 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the notice?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into evidence. The parties confirmed their understanding of the terms of tenancy as follows:

- This monthly tenancy began July 1, 2010.
- Monthly rent of \$381.50 is payable on the first of the month.
- The tenant paid a security deposit at the beginning of the tenancy, which continues to be held by the landlord.

The One Month Notice dated October 30, 2019, submitted into evidence, states an effective move-out date of November 31, 2019, which is clearly incorrect. As such the effective date is auto-corrected to November 30, 2019. The following box is checked off as the reason for seeking an end to this tenancy:

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

- *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The "Details of Cause" section of the notice provides additional details explaining that the cause relates to an incident involving water thrown from the tenant's balcony, which landed on a person who was on the lawn below.

The tenant confirmed receipt of the One Month Notice served by posting on the rental unit door on October 31, 2019. On November 5, 2019, the tenant filed an Application for Dispute Resolution to cancel the notice, which is within the 10 days allowed by the *Act* for filing a dispute of a notice for cause.

It was undisputed by the parties that it was not the tenant who threw the bucket of water over the balcony, but instead it was another resident who had been visiting the tenant's rental unit.

It was undisputed by the parties that a person below who was on the lawn was struck by the water.

The landlord testified that the resident who threw the bucket of water had already been evicted as a result of the incident. The landlord submitted that the tenant should also be evicted because the incident occurred on her balcony.

The tenant testified that the situation was an accident, and that the other resident had been helping with watering her plants on the balcony as a result of medical issues that made it difficult for the tenant to lift the watering bucket herself. The tenant stated that she had her back turned at the moment the incident happened and therefore she did not witness the incident, however, the other resident had explained to the tenant that it was an accident that the bucket of water being spilled over the railing.

The tenant called a witness L.I. who had also been on the balcony at the time of the incident. The witness testified that the other resident was watering the plants on the balcony and stepped on a lawn ornament on the balcony which caused her to stumble into the railing of the balcony resulting in the bucket of water spilling out over the balcony onto the person on the grounds below.

Analysis

Section 47(1)(d)(i) of the *Act* 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 significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 47(4) of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant received the landlord's One Month Notice on October 31, 2019. The tenant filed an application to dispute the notice on November 5, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

As explained above, in this matter the landlord bears the burden of proof of the claims made in the One Month Notice.

Based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove the grounds for issuing the One Month Notice on the grounds of significant interference and unreasonable disturbance as explained below:

- The tenant claimed that the incident was an accident, and provided a witness to corroborate the tenant's testimony that the incident was not intentional. Further, the tenant also submitted into documentary evidence a statement from the resident who spilled the water attesting to the fact that it was accidental and that the tenant was not involved in the incident.
- The landlord confirmed that the tenant was not the person who spilled the water and that the person who spilled the water has already been evicted from the rental property for the incident. The landlord claimed that the incident was intentional but did not submit any evidence to support his allegations.

- This is the only incident referenced by the landlord as the reason for issuing the One Month Notice. Although a tenant is responsible for the actions of their guests, and a situation where water has been thrown on a person is a serious concern, I find that this is an isolated incident and an accidental incident, as there has been no evidence presented to contradict this finding. As such, I do not find that the landlord has provided sufficient evidence to demonstrate the tenant's actions meet the threshold of "significant" and "unreasonable" as required under the *Act*.

Therefore, as I do not find that the landlord has proven the grounds for ending this tenancy, the tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

As such, the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant was successful in her application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated October 30, 2019 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

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: January 03, 2020

Residential Tenancy Branch