



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Town Park Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT, MT.

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause pursuant to section 47(4) of the *Act*;
- an order requesting more time to cancel the Notice pursuant to section 66(1) of the *Act*;
- authorization to recover the filing fee for this application pursuant to section 72(1) of the *Act*.

The landlord, the tenant and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with her application for dispute resolution via Canada Post registered mail on December 20, 2019. The landlord confirmed receipt of the tenant's application for dispute resolution.

The landlord testified that witness OW, wished to give evidence in relation to the hearing. The landlord was informed to ensure that the witness stayed outside until the landlord had finished with his testimony.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the One Month Notice pursuant to section 47 of the *Act*?

Is the tenant entitled to more time to cancel the Notice pursuant to section 66(1) of the *Act*?

Is the tenant entitled to the filing fee for this application pursuant to section 72 of the *Act*?

Should the tenant be unsuccessful in seeking to cancel the One Month Notice to End Tenancy for Cause, it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the One Month Notice to End Tenancy for cause.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below:

Both parties agreed to the following facts. This tenancy began in November 2003 and is currently ongoing. A new tenancy agreement was signed by both parties in October 1, 2017. Monthly rent in the amount of \$450.00 is payable on the first day of each month. A security deposit of \$225.00 was paid by the tenant to the landlord and continues to be held in trust.

The landlord issued the One Month Notice on November 28, 2019. The landlord testified that the Notice was posted on her door on the same day it was issued. The One Month Notice had a stated move-out date of December 31, 2019.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- 2) tenant or a person permitted on the property by the tenant has engaged in illegal activity.
 - jeopardized a lawful right or interest of another occupant or the landlord.

Tenant received the Notice on November 28, 2019 and filed her application on December 13, 2019.

The landlord testified that the tenant had engaged in illegal activity by stealing a laptop from the witness OW and his girlfriend and that a police report had been filed. The landlord maintained that the tenant had been involved in illegal activity and that the police had been called and were investigating the missing laptop.

Witness OW testified and read the contents of the letter dated November 11, 2019 and accused the tenant of stealing the laptop when she was “minding the dog” in their rental unit. Witness OW testified that the Police had been called and had interviewed the tenant in relation to the theft.

The tenant testified and confirmed that she was “minding the dog” at her step daughter’s and her boyfriend’s unit. Tenant testified that her stepdaughter as referred to her as “mom” in the last seventeen years and they have a mother-step daughter relationship. The tenant testified that she did not break the laptop and ascertained that her stepdaughter’s boyfriend took drugs regularly including cocaine. The tenant had advised her stepdaughter several times that the boyfriend was a bad influence in her life.

The tenant testified that she had experienced problems with her stepdaughter’s boyfriend OW and his family. Tenant testified that the OW’s father worked for the landlord, and on occasions had entered her rental unit illegally and informed her that he was there to undertake “maintenance work” The tenant testified that she had made complaints to the landlord, but these had been ignored by management.

Advocate for the tenant argued that the laptop was not split in half as indicated in the photograph. He argued “having a police interaction did not meet the criteria for illegal activity”. Advocate argued that his client has not been charged for possession and no charges have been brought by the Police to date.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has

- i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Section 47(4) allows a tenant who receives a notice to end tenancy under this section to apply to dispute the notice within 10 days of receiving the Notice. Section 47(50) stipulates that if a tenant does not apply to dispute the Notice within 10 days the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the notice and they must vacate the rental unit.

The tenant has applied to dispute a One Month Notice issued on November 28, 2019. The tenant applied to dispute the Notice on December 13, 2019. As such, I find the tenant has failed to apply within 10 days as required under Section 47(4).

Section 66(1) of the Act allows the director to extend a time limit established under the Act only in exceptional circumstances. Residential Tenancy Policy Guideline 36 requires:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Residential Tenancy Rule of Procedure 6.6 states;

“The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.” In this case, the landlord must demonstrate why they feel the One Month Notice is valid.

- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that the landlord has failed to provide copies of letters to illustrate that the tenant significantly interfered with or unreasonably disturbed another occupant or seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

I have reviewed the letter dated November 11, 2019, it is unclear as to which party wrote the letter. I dismiss the service of this letter by the landlord on February 3, 2020. The landlord had abundant opportunity to file the evidence in accordance with the procedure rules and was out of time.

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.

Illegal Activity

The landlord has not produced sufficient evidence to establish that, on the balance of probabilities, the tenant has engaged in illegal activity at the property. In the absence of evidence of a subsequent criminal conviction, the testimony of the landlord and witness OW that the tenant engaged in criminal activity at the property is negligible on the balance of probabilities. 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*.

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: February 12, 2020

Residential Tenancy Branch