



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advance Realty Ltd 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 the One Month Notice to End Tenancy for Cause pursuant to section 47(4) of the *Act*;

The landlord's property manager SG ("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 landlord had two further representatives of the firm listening into the hearing.

The tenant testified that she served the landlord with her application for dispute resolution via Canada Post. The landlord confirmed receipt of the tenants' application for dispute resolution and receipt of their evidentiary package after the documents were sent by Canada Post Registered Mail on December 18, 2019. Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been served with all the documents and deemed receipt pursuant to section 90 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy pursuant to section 47 of the *Act*?
2. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on April 28, 2017 and is currently ongoing. Monthly rent in the amount of \$799.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant to the landlord and is held in Trust.

The landlord issued the One Month Notice on December 10, 2019. The landlord testified that the notice was served in person.

The Notice indicates an effective move-out date of January 31, 2020.

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

- 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;
 - put the landlord's property at significant risk;
- tenant or person permitted on the property has caused extraordinary damage to the property.
- tenant or a person permitted on the property by the tenant has engaged in illegal activity.

The landlord testified that there have been a number of incidents at the rental unit caused by the tenant's daughters resulting in the landlord sending the tenant a letter dated October 18, 2019. The landlord testified that the eldest daughter's name as an occupant was withdrawn from the tenancy last year due to the incidents.

The landlord testified that the youngest daughter allegedly broke into a rental unit and damaged the tenant's front door on December 7, 2019. The incident was witnessed by another tenant who called the police. The daughter and her friend fled the unit. The landlord testified that there was evidence that the youngest daughter aged 16 had been dealing with substance and alcohol abuse.

The landlord testified that they have been trying to work with the tenant for a number of months and have presented her with other options; and have only moved to end the tenancy reluctantly but they have to look out for the interests of the other residents of the building.

The tenant testified that she was away on December 6th and 7th visiting her eldest daughter in Victoria, when the alleged incident took place. The tenant testified that her youngest daughter was assaulted and lost consciousness in another rental unit in the building and had no knowledge of what had happened. The matter had been reported to the Police and they are conducting their own inquiries.

The tenant and her advocate both argued to the fact that the tenant has some significant physical and mental challenges in relation to her eldest daughter and this is also reflected in the letter filed by the tenant. The tenant testified that the eldest daughter is currently living with her ex-husband and only visits when she requires medication.

Analysis

The tenant has applied to dispute a One Month Notice issued on December 10, 2019. 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.

Section 47(1) and section 47(1) of the *Act* state that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.
- 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 tenant disputed the One Month Notice on time and filed for Dispute Resolution on December 18, 2020.

The tenant's advocate argued that the last incident letter received from the landlord was dated October 18, 2019 and the eldest daughter had stopped living in the rental unit around March 2019 and had moved in with her father, her name had been withdrawn from the tenancy agreement. The tenant testified that the eldest daughter only attends to receive her medication.

I have reviewed the letters from the residents in the building and I am unable to give weight to this evidence as two of the letters are unsigned. I am unable to ascertain who wrote these letters. Pursuant to Rule 7.17 I find this evidence has no weight and will not be considered.

I have reviewed the letter from the caretaker dated December 7, 2019 he reiterates hearsay evidence that was heard during a conversation with tenant DM. I give no weight to this evidence.

The youngest daughter has not been charged by the police for the break in and damage to the door of another rental unit, therefore I find, on a balance of probabilities, the landlord has failed to establish that the tenant's daughters have engaged in activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; that the landlord has unable to establish cause for ending this tenancy; and that the 1 Month Notice to End Tenancy dated December 10, 2019 is not valid.

I find that the evidence and testimony given by both parties was a reliable and represented version of events, that were equally probable however the test that I have to apply is on the balance of probabilities which is to say, that it is more likely than not that based on the evidence and testimony that events occurred in a certain way as opposed to another.

I have listened to the testimonies of the parties, 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 27, 2020

Residential Tenancy Branch