



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter Todd Decker
and [tenant npressed to protect privacy]

DECISION

Dispute Codes CNC, RP.

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47; and,
- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Witness JL attended on behalf of the landlord. Tenant TI attended on her behalf and that of the other tenants.

The tenant testified that the landlord was served with the Notice of Dispute Resolution witnessed by the tenant's friend SK on December 19, 2020. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*.

Preliminary Issue

The landlord testified that he did not receive the tenant's evidentiary package until 7 days before the hearing. The main bulk of the tenant's evidence was submitted to the Residential Tenancy Branch on December 18, 2019; however, the tenant did submit 6 pages of evidence on February 12, 2020. The rules of procedure, Rule 3.11 states the following:

The Dispute Resolution Rules of Procedure. Rule 3.11
3.11 Unreasonable delay

Evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

The landlord submitted that it was unfair and prejudicial to consider this evidence, consequently, I will be not considering the 6 pages of evidence submitted by the tenants on February 12, 2020.

Issues

Is the tenant entitled to cancel a One Month Notice pursuant to section 47 of the *Act*?
Is the tenant entitled to an order for regular repairs pursuant to section 32 and 62 of the *Act*?

Should the tenant be unsuccessful in having the One Month Notice cancelled, is the landlord entitled to an order of possession pursuant to Section 55?

Background and Evidence

The tenancy began July 1, 2019 as a fixed term tenancy. Rent is \$1825.00 per month and a security deposit of \$912.50 is held in Trust by the landlord.

The landlord issued the One Month Notice on December 18, 2019, with an effective date of January 31, 2020. The tenant testified that the notice was posted on her door and she received it on the same day it was issued. The grounds stated for ending the tenancy were the following:

- Tenant or a person permitted on the property by the tenant has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupant.
- Jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant's application includes a claim for repairs relating to an extractor fan, washroom toilet, key fob and microwave. The tenant had requested additional repairs on her application but both parties agreed that these repairs have been undertaken by the landlord prior to the hearing.

The only request for repair still in dispute is the repair to the extractor fan and the microwave in the kitchen.

The tenant testified that the microwave in the kitchen kept blowing a fuse and each time it blew she was responsible for the payment of the replacement fuse. The landlord testified that there are two microwaves in the kitchen, and he had warned the tenants several times not to use the microwave that blows the fuse.

The landlord testified that he had supplied a second microwave in order that this problem could be avoided but the tenants continued to use the first microwave which the tenant testified was convenient.

The landlord testified that he has carried out the repairs in the rental unit since the tenant's application, but the tenant is complaining unnecessarily. He testified that she demanded a certified plumber and electrician to carry out the repairs in accordance with the requirements of her insurance.

The landlord provided evidence that the extractor fan was working smoothly and that he had called a professional plumber to fix the washroom toilet. He was advised by the plumber that it was not necessary to replace the toilet in the washroom.

The landlord testified that there were noise complaints received by the Strata and from other tenants in the neighboring units. The landlord testified that the first noise complaint received was on the evening that the tenant and her family moved in on July 1, 2019. There was "yelling" heard in the hallway and there was someone "arguing on the phone" which significantly interfered and disturbed the other tenants in the building.

The landlord testified that the tenant's brother was intoxicated and there was a person swearing and yelling in the hallway, he testified that a bottle of vodka was left outside in the hallway on the stair carpet.

The tenant acknowledged that they did have guests when they moved in and that they had problems removing someone from the unit that had become intoxicated. The tenant denied that her brother was "drunk" on the night that they moved in.

The landlord's witness JL testified that he lives in another unit, next door to the tenant and that there was a further incident on November 17, 2019 whereby he could hear loud yelling and an argument was taking place around 1:00 a.m. JL testified that he could

hear a male voice and doors slamming. He testified that several of the tenants complained to the Strata and they forwarded a letter of complaint to the landlord.

The tenant denied there was arguments and fighting in the rental unit on November 17, 2019. The tenant testified that they did people over in the evening. She testified that the witness is a friend of the landlord and “looks after and carries out repairs” to the rental unit on behalf of the landlord when the unit is vacant.

The tenant testified that the landlord attended the rental unit on December 18, 2019 despite the tenant’s mother informing the landlord that she wished to cancel the appointment. She testified that the landlord turned up at the rental unit and insisted “on going upstairs” and started to provoke other members of her family.

The tenant testified that the landlord barricaded himself inside the rental unit and refused to move or leave the unit. She further testified that the police were called to the rental unit and requested the landlord to leave the rental unit.

Analysis

The tenant has made applications for (i) an order to cancel the One Month Notice; (ii) a request for repairs. I will address each of these applications separately.

The tenant acknowledged receipt of the landlord’s One Month Notice on December 18, 2019 and filed an application to dispute the One Month Notice on December 18, 2019 which is within the ten days of receipt. Therefore, I find that the tenant may dispute a One Month Notice pursuant to section 47 of the *Act* and is within the prescribed time period.

Pursuant to *Rules* 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the notice to end the tenancy is valid. This means that the landlord must prove, that it is more likely than not, that the facts stated on the notice to end tenancy are correct.

In this matter, the landlord has failed to provide particulars regarding the details of the cause in the One Month Notice and testimony. I find there was insufficient information provided about the specific dates, people involved, and the circumstances mentioned in the One Month Notice.

I have reviewed the letter from the Strata QP Properties, and I am of the opinion that this was one incident that took place in November 2019 and that the landlord has not provided formal written warnings together with sufficient reasons to end the tenancy.

I find that the landlord has failed to provide sufficient evidence to prove that the actions of the tenant's guests meets the threshold for ending the tenancy or establish that the tenant had an unreasonable number of occupants, or that the tenants significantly interfered with or disturbed the landlord and other tenants as alleged in the notice to end tenancy.

In the absence of any other evidence that has significantly disturbed the other occupants in the building, I do not find that the landlord has met the burden of proof in this matter.

(ii) Repairs

Section 32 of the Act states the landlord has the following duty to maintain the rental unit:

- 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
 - (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the tenant has not provided sufficient evidence to establish that a second microwave is required to "comply with the health, safety and housing standards required by law." In the absence of such evidence, I find that the tenant has not established a right to have a replacement microwave and extractor fan in the rental unit pursuant to section 32 of the Act. Accordingly, I dismiss the tenant's application for repairs.

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 continues until ended in accordance with the Act.

Conclusion

I dismiss the tenant's application for repairs.

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: March 07, 2020

Residential Tenancy Branch