



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Society of Housing Opportunities and
Progress and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On January 22, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking to cancel a One Month Notice to End Tenancy dated January 15, 2020 ("the One Month Notice").

The matter was set for a conference call hearing. Both parties attended the hearing and provided affirmed testimony and were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

I note that 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated January 15, 2020, pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

Both parties agreed that the tenancy began on February 1, 2009. Currently, the Tenant is required to pay rent in the amount of \$387.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$290.00 which the Landlord continues to hold.

The Landlord's Agent testified that the Tenant has had several noise complaints throughout her tenancy. The Landlord's Agents stated that the complaints have been made from the occupant who resides in a suite directly below the rental unit. According to the Landlord's Agents, the noise complaints were in relation to noise made by the Tenant in the late hours of the night in which the Tenant could be heard flushing the toilet, running water, cleaning, moving furniture, and dropping boxes.

The Landlord's Agents made the witness S.S. available during the hearing confirming that she has endured regular noise disturbances from the Tenant which has prevented her from sleeping at night S.S. stated that she has attempted to discuss the issues surrounding the noise with the Tenant, however, that has not proven to be effective.

The Landlord's Agents stated that they have issued several written warnings to the Tenant regarding the noise complaints they have received on January 21, 2019, October 18, 2019 and a final warning on November 28, 2019. The Landlord's Agents stated that the warning letters indicated that if the Tenant did not comply with the warning letters, it would result in the tenancy ending. The Landlord's Agents stated that they received a further complaint on December 3, 2019 which resulted in the Landlord deciding to proceed with ending the tenancy.

For the above mentioned reasons, the Landlord's Agents stated they served the Tenant with the One Month Notice on January 15, 2020 with an effective vacancy date of February 29, 2020, by posting it on the door of the dispute address. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice is;

"Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

In response, the Tenant stated that the noise complaints do not constitute a breach of a material term of the tenancy agreement. Furthermore, the Tenant stated that the noise described by S.S. constitutes reasonable noise involved with day to day living. The Tenant described her health issues, which require her to use the washroom frequently. As such, the Tenant does not believe that she has caused any disturbance to the occupant who lives below her. The Tenant feels as though her tenancy should not be terminated as a result.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on January 15, 2020 with an effective vacancy date of February 29, 2020, by posting it on the door of the dispute address. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to the Policy Guideline #8; a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; 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.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

During the hearing, the Landlord's Agents stated that the Tenant had been cautioned on several occasions with written warnings about the noise emitting from the Tenants suite. The Landlord's Agents stated that the Tenant has not complied with the warnings as they continue to receive complaints from the occupant who lives below the Tenant. The Landlord is seeking to end the Tenancy as the Tenant has breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I find that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. In this case, I find that the Landlord has provided insufficient evidence to demonstrate that

the noise caused by the Tenant constitutes a breach of a material term of the tenancy agreement.

I further find that the Landlord provided insufficient evidence to demonstrate that the Landlord informed the Tenant in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; 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.

In light of the above, I cancel the One Month Notice, dated January 15, 2020. I order the tenancy to continue until ended in accordance with the Act.

Nevertheless, the Tenant is now warned that any further valid noise complaints received by the Landlord may give the Landlord sufficient cause to end the tenancy for the Tenant significantly interfering with or unreasonably disturbing another occupant or the Landlord.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated January 15, 2020 is cancelled. The tenancy will continue 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 26, 2020

Residential Tenancy Branch