



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CML PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, OPC, FFL

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Legal Counsel for the Tenant stated that on January 31, 2020 the Tenant's Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch on January 29, 2020 were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents, and the evidence was accepted as evidence for these proceedings.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and the recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on January 31, 2020 the Landlord's Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch on January 30, 2020 were sent to the Tenant, via registered mail. The Tenant.

On February 06, 2020 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on February 07, 2020. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On March 11, 2020 the Tenant submitted additional evidence to the Residential Tenancy Branch. Legal Counsel for the Tenant stated that this evidence was served to the Landlord, via registered mail, on March 10, 2020 or March 11, 2020. The Agent for

the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Everyone present at the hearing (with the exception of legal counsel) affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be set aside, or should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause, which declared that the Tenant must vacate the rental unit by February 29, 2020, was mailed to the Tenant on January 24, 2020. In the “Details of Cause” section of this Notice to End Tenancy, the Landlord declared that the Notice was being served because the Tenant breached a Residential Tenancy Branch order, dated March 15, 2019, that stipulated the Tenant’s son was not to be on the property for any reason.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution proceeding on March 15, 2019. The Tenant submitted a portion of a copy of the decision rendered on March 15, 2019.

In the decision of March 15, 2019, the Arbitrator recorded that the parties agreed to settle the issues in dispute at the hearing on March 15, 2019. The terms of the settlement agreement are:

- The parties agree that the tenancy will continue; and
- The Tenant agreed that the Tenant will not “allow” the Tenant’s son (DM) “onto the property for any reason”.

In the decision of March 15, 2019, the Arbitrator Ordered that Tenant not “allow” the Tenant’s son (DM) “onto the property for any reason”, effective March 15, 2019. The Arbitrator declared that the Landlord is at liberty to issue a new notice to end tenancy if the Tenant fails to comply with her Order of March 15, 2019.

The Agent for the Landlord stated that the Tenant’s son (DM) was on the property on December 16, 2019, January 22, 2020, and January 23, 2020. The Tenant stated that she was not aware that her son was on the property on those dates until she was provided that information by a third party.

The Tenant stated that she did not invite her son onto the residential property on those dates, nor has she invited him onto the property since March 15, 2019. Legal Counsel for the Tenant stated that the Tenant's son is 46 years old, and the Tenant has not control over him.

The Landlord presented no evidence to establish that the Tenant has invited her son to the residential property since March 15, 2019. The Agent for the Landlord stated that other occupants of the residential property are afraid of the son.

The Agent for the Landlord stated that other occupants of the residential complex have reported that the Tenant has delivered meals to her son while the son's van was parked on the residential property.

The Tenant stated that her son was living in his van in November and December of 2019, however she has not delivered meals to that van while it was parked on the residential property since March 15, 2019. She stated that in November and December of 2019 she delivered meals to the van, but only when it was parked on the residential street.

The Agent for the Landlord stated that at the hearing on March 15, 2019, the Tenant assured the Arbitrator that she was capable of preventing her son from coming onto the residential property.

Legal Counsel for the Tenant stated that she was present at the hearing on March 15, 2019 and that she clarified with the Arbitrator that the Tenant could not be held responsible if the Tenant came onto the property without the Tenant's permission. She stated that at the hearing on March 15, 2019 the Tenant declared that there was a Protection Order preventing the son from having contact with the Tenant, although that Protection Order has now expired.

Analysis

On the basis of the Arbitrator's decision of March 15, 2019, I find that the Landlord had the right to serve the Tenant with a One Month Notice to End Tenancy for Cause if the Tenant "allowed" her son (DM) onto the residential property anytime after March 15, 2019.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the Tenant has not "allowed" her son (DM) onto the residential property anytime after March 15, 2019.

In adjudicating this matter, I have placed no weight on the undisputed testimony that the Tenant's son was on the property on December 16, 2019, January 22, 2020, and January 23, 2020. I find this submission to be irrelevant, as there is no evidence to

suggest that the Tenant was aware that her son was on the property on those dates and there is no evidence to suggest he was on the property with the consent, or at the invitation, of the Tenant.

In adjudicating this matter, I have placed no weight on the Agent for the Landlord's testimony that he has received reports that the Tenant has delivered meals to her son while the son's van was parked on the residential property. As there is no evidence to corroborate this hearsay evidence, and the Tenant denies delivering means to the van while it was on the residential property since March 15, 2019, I find this submission is not relevant.

In adjudicating this matter, I have placed no weight on the Agent for the Landlord's testimony that at the hearing on March 15, 2019, the Tenant assured the Arbitrator that she was capable of preventing her son from coming onto the residential property. I placed no weight on this submission because there is no evidence to corroborate it, and it is refuted by Legal Counsel for the Tenant, who was present at the hearing on March 15, 2019.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant "allowed" her son (DM) onto the residential property at anytime after March 15, 2019. As such, I find that there is insufficient evidence to establish that the Tenant breached the Arbitrator's Order of March 15, 2019. As there is insufficient evidence to establish that the Tenant breached the Arbitrator's Order of March 15, 2019, I find that the Landlord has not established grounds to end this tenancy on the basis of that breach.

As the Landlord has not established grounds to end this tenancy on the basis of the Tenant breaching the Arbitrator's Order of March 15, 2019, I grant the Tenant's application to cancel this One Month Notice to End Tenancy for Cause, and I dismiss the Landlord's application for an Order of Possession.

I find that the Landlord has failed to establish the merit of the Landlord's Application for Dispute Resolution, and I therefore dismiss the Landlord's application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

I set aside the One Month Notice to End Tenancy for Cause, dated January 24, 2019, and I order that this tenancy continue until it is ended in accordance with the *Act*.

I dismiss the Landlord's application for an Order of Possession and to recover the fee for filing an Application for Dispute Resolution.

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: April 02, 2020

Residential Tenancy Branch