



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlord's One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47 of the *Act*.

Both parties, the landlord's property manager KF and the tenant DL 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 confirmed receipt of the tenant's application for Dispute Resolution and receipt of her evidentiary package after the documents were sent by Canada Post Registered Mail on April 14, 2020. Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been served with all documents.

The tenant confirmed receipt of the landlord's evidentiary package after it was sent to the tenant by way of Canada Post Registered mail on May 15, 2020. The tenant is found pursuant to section 88 of the *Act* to have been served with this package in accordance with the *Act*. The Canada Post tracking numbers for both registered mailings are listed on the cover page of this decision.

Section 55 of the *Act* requires that when a tenant submits an application for Dispute Resolution (the "application") 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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

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

Should the tenant not be successful in having the One Month Notice cancelled, 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 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 submissions and my findings are set out below:

The tenancy began on March 1, 2016 as a fixed term tenancy which then reverted month to month. Rent is \$695.00 per month and a security deposit of \$ 312.50 is held in Trust by the landlord.

The landlord issued the One Month Notice on March 18, 2020 with an effective date of April 30, 2020. The One Month Notice was sent to the tenant by registered mailing on March 18, 2020. The tenant affirmed that she did not receive the registered mailing until March 27, 2020. A copy of the Canada Post tracking was submitted in evidence. It indicates that the mailing was ready to be sent out on March 26, 2020 by Canada Post.

The tenant disputed the One Month Notice and filed an application to the Residential Tenancy Branch on March 30, 2020. The landlord's One Month Notice stated that the tenant or a person permitted on the residential property by the tenant has:

- Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- Significantly interfered with or unreasonably disturbed another occupant of the landlord;
- Put the landlord's property at significant risk;
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant affirmed that the landlord attended the rental unit on March 5, 2020 and attached a Notice on the tenant's door indicating repairs were to take place in the tenant's property on March 10, 2020.

The tenant testified that she was sleeping on her couch, when she was startled by the property manager, the contractor and locksmith walking into in her rental unit at 9:30 a.m. on March 10, 2020. The tenant affirmed they only knocked on the door once, before they walked into the unit. The tenant testified that the property manager startled her and said "you need to get out"

The tenant testified that the property manager and the contractors refused to move or leave the unit. The tenant affirmed the police were called to the rental unit and requested that the property manager and contractors to leave. The tenant affirmed that she informed all the parties that due to Covid-19 that she had "no where to go".

The property manager affirmed that they knocked on the door and waited thirty minutes before they entered the rental unit. She testified that the tenant was aware that they were attending the unit to carry out the repairs and change the locks in the rental unit.

The property manager testified that the tenant had denied access to the rental unit in the past and refused to have the repairs undertaken in the rental unit. The property manager confirmed that the locks had been changed in the other rental units and a new key had been cut for the tenant due to previous safety concerns.

The tenant pointed out that the property manager had submitted photographs as evidence of her rental unit with the repairs taking place, hence this indicated that she had allowed contractors into her unit in the past to carry out repairs. The tenant affirmed that the previous property manager had allowed several "girls" in the various rental units and she feared for her own safety and had the locks changed to her unit.

The tenant affirmed that she did not feel comfortable in allowing the property manager and other people into her rental unit during Covid-19 and that the property manager and contractors let themselves into her unit. The tenant affirmed that after this incident the property manager proceeded with issuing the One Month Notice on March 18, 2020.

The landlord testified that there were complaints received by the neighbours and from other tenants in the neighbouring units regarding the tenant's pets and the garbage. The landlord testified that it significantly interfered and disturbed the other tenants in the building.

The tenant affirmed that she has not disturbed any other occupants in the building but had complained many times to the landlord who had failed to carry out the repairs properly or refused to address the issues of the garbage bins. The tenant acknowledged that she had left one or two bags of garbage because "the bins were full" from the neighboring units.

The tenant affirmed that one of the neighboring tenants deliberately took pictures of her cats and garbage. She affirmed that these pictures were regularly forwarded to the property manager. The tenant affirmed that she had complained to the property manager and management several times of the other tenant, but her issues were being ignored.

The tenant testified that the shower area had been leaking for a number of years and the repairs that the landlord had undertaken were inadequate. There was the issue of the incorrect sealant, which resulted in the shower leaking and the problem of silverfish. The tenant stated that the landlord had started the eviction process because she had complained about the lack of repairs, hence, the landlord started the eviction process.

The tenant affirmed that the previous property manager had submitted in writing that there was no requirement for the tenant to provide a pet damage deposit and confirmed that the property manager was aware that the tenant had a dog living in the rental unit.

The tenant provided affirmed that the property manager had been aware that she had cats living in her rental unit and this had not been a problem with management in the past.

The tenant complained that five of the tenants had been recently evicted and this was a deliberate ploy on part of the landlord to renovate the units and increase the rent.

The Property Manager denied this and testified that previous tenants were evicted due to alcohol and mental issues.

Analysis

The landlord issued the One Month Notice on March 18, 2020. The One Month Notice was sent to the tenant by registered mailing on March 18, 2020. The tenant is deemed to have received the notice on March 23, 2020.

The tenant affirmed that she was in receipt of the landlord's One Month Notice on March 27, 2020 and submitted evidence from Canada Post. The tenant filed an application to dispute the One Month Notice on March 30, 2020. 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 the *Residential Tenancy Branch Rules of Procedure* 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.

I have considered all the evidence submitted as well as the testimony of the parties. I accept that the tenant has complained frequently, primarily about the repairs to her unit. But the tenant has provided access to the landlord on subsequent occasions to carry out the repairs, some of these repairs have been carried out inadequately by the landlord's contractors resulting in them returning to carry out the repairs.

With reference to the property manager's comments that the tenant's pets are disturbing other occupants. I find, that the landlord has failed to provide sufficient evidence. The tenant testified that her cats do not disturb tenants in the neighboring units. She affirmed that the previous property manager had provided a letter and confirmed in writing that the landlord was aware that the tenant had a dog living in the rental unit. The tenant affirmed that the property manager and the landlord were aware that she had pets in the rental unit, and this had not been an issue in the past.

The property manager affirmed in testimony that the tenant had seriously jeopardised the health and safety of the landlord and other tenants with regards to the issue of the garbage that has been "placed outside the tenant's rental unit" I have reviewed the landlord's letters dated October 11, 2019 and May 14, 2019 and October 11, 2019 relating to the issue of garbage. The tenant affirmed that the large bin provided for her unit in the "North" area is constantly full of garbage and she has no alternative but to leave the garbage outside her unit for a few days until the garbage bins is collected by the municipality.

I do not find that the landlord has met the burden of proof in this matter. I find the landlord has accepted the neighboring tenant's version of events and is ignoring the tenant's concerns. 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 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: June 23, 2020

Residential Tenancy Branch