



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, OLC, LRE, FFT

Introduction

On July 7, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with T.L. attending as an advocate for the Tenant. The Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing, Amendment, and some evidence by registered mail on July 21, 2020 and the Landlord confirmed that this package was received. The Landlord also confirmed that she received additional evidence from the Tenant and that she was prepared to respond to it. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing, Amendment, and evidence packages. As a result, I have accepted the Tenant’s evidence and will consider it when rendering this Decision.

The Landlord advised that she served her evidence by registered mail on or around July 31, 2020. The Tenant confirmed that she received this evidence and that she was prepared to respond to it. Based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord’s evidence package. As a result, I have accepted this evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Notice and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 15, 2016. Rent is currently established at \$1,500.00 per month and is due in half installments, on the first and fifteenth day of each month. A security deposit of \$750.00 was also paid. The parties provided differing testimony with respect to whether a written tenancy agreement was ever completed.

The Landlord advised that the Notice was served to the Tenant by being posted to her door on June 30, 2020. The Tenant confirmed that she received this Notice; however, she was not sure when. As she disputed the Notice within the legislated time frame, her request for more time to dispute the Notice was not necessary to be considered.

The reason the Landlord served the Notice is because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.” The Notice indicated that the effective end date of the tenancy was August 31, 2020.

The Landlord advised that the Tenant lives in the upstairs portion of the rental unit and her laundry room is located on the bottom floor. This room contains the breaker panel to the entire house. As well, the heat control for the entire house is located upstairs. She stated that the downstairs tenant is bound to a wheelchair and he has made numerous complaints to the Landlord that the heat is inadequate, and that the Tenant will not accommodate his requests to turn it up. The Landlord pays for all utilities and she has repeatedly asked the Tenant to try and accommodate the downstairs tenant's requests. On two instances in January 2020, the Tenant complained of the heat being too low or too high. She stated that the Tenant advised that she was tired of the downstairs tenant's complaints and suggested that he get heaters.

The downstairs tenant purchased space heaters; however, these would sometimes trip the breaker and the Tenant would often refuse to flip the breaker back on. The Landlord stated that she had a verbal agreement starting in the winter of 2016, with the Tenant, to leave the door into this laundry room unlocked so as to allow the downstairs tenant access to the breaker panel should the breakers trip in the future. However, the Tenant would occasionally lock this door anyways. At one point, the downstairs tenant was left in the dark because the door was locked and the Tenant refused to flip the breaker. The downstairs tenant called the police, who had to enter the rental unit and flip the breaker switch. As the Landlord stated that she is an absentee Landlord, she had no idea when this incident happened. On another occasion, as she again acknowledged that she is an absentee Landlord, she had her sister go to the rental unit to flip the breaker switch. She stated that the Tenant has not made any efforts to "get along" with the downstairs tenant and that she "hates him".

T.L. asked the Landlord many questions, mostly revolving around the specifics of the design or layout of the premises, but it was not clear the relevance of this questioning in relation to the reasons the Notice was served. However, she stated that the incident regarding the power issue where the police were involved took place in 2017.

The Tenant confirmed that this laundry room with the breaker panel is part of the rental unit that was included in her tenancy. She advised that she suffered a stroke, that she suffers from memory loss and blindness, and that navigating the stairs down to this laundry room is difficult. She stated that she often leaves work early in the morning and does double shifts, so she is not available to be home to flip the breakers or adjust the heat whenever the downstairs tenant requests this.

She acknowledged that she did have a verbal agreement with the Landlord to leave the door unlocked so that the downstairs tenant had access to flip the breaker. She also stated that there is nothing in front of the breaker panel that would impede the downstairs tenant's ability to flip the switch himself. However, she confirmed that she now locks the door as she is concerned that male guests of the downstairs tenant could easily access her rental unit. It is her belief that the Landlord has put her in the position to manage the property.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As such, the onus is on the party issuing the Notice to substantiate the validity of the reason for service of the Notice.

With respect to the reasons on the Notice, I find it important to note that the area in question with the breaker panel is a portion of the Tenant's rental unit that she pays full rent for. Unless the Landlord has complied with Section 27 of the *Act* by reducing or terminating the laundry facility, I do not find it reasonable to expect that the Tenant be required to allow the downstairs tenant entry into this area. While there was an informal verbal agreement that the Tenant would leave this door unlocked, as this area forms part of her rental unit, and as there is no other means to protect herself from entry into her rental unit by any person, I find it reasonable that she be allowed to keep this door locked.

Regarding the heating issue, Section 32 of the *Act* requires that the Landlord provide and maintain the residential property in a state of decoration and repair that: "complies with the health, safety, and housing standards required by law, and having regard to the

age, character and location of the rental unit, makes it suitable for occupation by a tenant.” In this particular situation, this would mean that the Landlord is required to ensure that adequate heat is provided for each of her tenants. While the control for the heat is in the Tenant’s unit, it is still the Landlord’s responsibility to ensure that the downstairs tenant is provided with the adequate level of heat that complies with health, safety, and housing standards required by law. Furthermore, if space heaters are required to provide this, it is the Landlord’s responsibility to ensure that the premises be in a condition that could accommodate such appliances.

If the rental unit is not in a condition or state of repair that complies with health, safety, and housing standards required by law to accommodate the use of extra appliances, the responsibility is on the Landlord to determine how best to rectify this issue. I do not find it reasonable that the Tenant should be required to flip the breaker switch every time it triggers.

While I acknowledge that the tenants have likely had disagreements between each other and may have engaged in behaviours which could jeopardize their tenancies, I find that the reasons put forth by the Landlord on this Notice stem from her reliance on the tenants having to navigate these issues between themselves, in spite of the conditions of the rental unit that the Landlord put them in.

As the onus is on the Landlord to prove that the Tenant acted in a manner to warrant service of the Notice, I find that the Landlord has provided insufficient evidence to support service of the Notice. Given that the Landlord is an admitted absentee Landlord, I am satisfied that these issues between the tenants are borne out of the Landlord placing them in a property that is inadequately designed to mitigate for these types of issues, and is the root cause for the tenancies not being successful.

As such, I find that the Landlord has provided little persuasive evidence that the actions of the Tenant would constitute a significant interference with or unreasonable disturbance of another occupant or the Landlord, or that the Tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. Consequently, I do not find that the Landlord has submitted compelling evidence to substantiate service of the Notice upon the Tenant.

Ultimately, I am not satisfied of the validity of the Notice and I find that the Notice is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month’s rent.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of June 30, 2020 to be cancelled and of no force or effect.

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: August 12, 2020

Residential Tenancy Branch