



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, RP, PSF, LRE, OLC

Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32; and
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause (the "One Month Notice") and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the One Month Notice.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the One Month Notice.

Preliminary Issue- More time to cancel the One Month Notice

Section 47(4) of the *Act* states:

A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

The parties agreed that the tenant was personally served with the One Month Notice on July 19, 2020. The tenant applied for dispute resolution on July 22, 2020. I find that the tenant filed this application within the 10 days set out in section 47(4) of the *Act*. Therefore, the tenant did not need to apply for more time to make this application.

Preliminary Issue- Amendment

The tenant's application for dispute resolution lists the shortened first name of landlord B.L. Pursuant to section 64 of the *Act*, I amend the tenant's application to state landlord B.L.'s full first name.

Issue to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 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 landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2018 and is currently ongoing. Monthly rent in the amount of \$871.25 is payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Landlord B.L. testified that on July 19, 2020 she personally served the tenant with a One Month Notice with an effective date of August 31, 2020. The tenant confirmed receipt of the One Month Notice on July 19, 2020.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;

The landlords testified that they served the tenant with the One Month Notice because they no longer wished to be landlords and because landlord B.L. and the tenant did not get along. The landlords testified that the tenant yelled at them when they moved her flowerpots to paint an outside railing.

The tenant's daughter testified that the tenant was not provided with any warning letters prior to receiving the eviction notice. The tenant testified that she was upset that the landlord was dripping paint on her plants.

Landlord B.L. testified that there has been a history of confrontations with the tenant and that it has caused he and her husband health problems as they do not know when the tenant will "go off". Landlord B.L. did not provide any further information or testimony on past confrontations.

Analysis

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

of the residential property.

I find that while the hostility between the tenant and landlord B.L. has undoubtedly disturbed the landlords; however, this disturbance was not significant enough to constitute an unreasonable disturbance. The landlords are not entitled to an Order of Possession because the landlords and the tenant do not get along. The landlords testified that they served the tenant with a One Month Notice because they no longer wish to be landlords, this is not a ground for eviction under section 47 of the *Act*.

Section 47(1)(d)(ii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

I find that the landlords have not proved, on a balance of probabilities, that the actions of the tenant, have seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. I find that not getting along is not a ground for eviction under section 47(1)(d)(ii) of the *Act*.

Sections 47(1)(e)(ii) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The term "illegal activity" includes a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the

landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

I find that the landlords gave insufficient evidence of illegal activity at all. I find that the landlords have not proved that the tenant engaged in any illegal activities.

Pursuant to my above findings, I find that the One Month Notice is cancelled and of no force or effect.

Conclusion

I find that the One Month Notice is cancelled and of no force or effect. This tenancy will continue on 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: August 18, 2020

Residential Tenancy Branch