



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amber Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- Recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an 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 and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, three witnesses for the Tenant, and two agents for the Landlord (the Landlord's Agents), all of whom provided affirmed testimony. The Landlord's Agents acknowledged service of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Preliminary Matter #1

The Rules of Procedure state that the parties must serve each other with copies of the documentary evidence they intend to rely on at the hearing.

The Tenant testified that their documentary evidence was served on the Landlord's Agents by registered mail in three separate packages and the Landlord's Agents confirmed receipt of these packages in the hearing. The Landlord's Agents stated that the bulk of the Landlord's documentary evidence was served on the Tenant by registered mail and the Tenant confirmed receipt in the hearing. Neither party raised concerns regarding service or the acceptance and consideration of this documentary evidence.

The Landlord's Agents stated that a second package of documentary evidence relating to an incident on August 24, 2020, was also served on the Tenant, however, this evidence was served significantly outside of the service timelines set out under rule 3.15 of the Rules of Procedure. Further to this, the evidence contained in this package related to an incident which occurred significantly after the One Month Notice was served. As a result, I find that it does not relate to the matters I must hear and decide.

Based on the above, I have accepted all of the documentary evidence before me from the parties for consideration in this matter except for the late, unrelated documentary evidence from the Landlord outlined above, which I have excluded from consideration.

Preliminary Matter #2

All witnesses were excluded from the proceedings until called upon to provide testimony.

Although the Tenant had arranged for three witnesses to be present, only two were called upon to provide testimony during the hearing, K.T. and J.H., neither of whom provided relevant testimony not already contained in their written witness statements. As a result, the Tenant did not call their last witness V.P. to provide testimony in the hearing and instead relied on the written witness statements submitted for my consideration.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the One Month Notice is not cancelled, is the Landlord entitled to an Order of Possession for the rental unit pursuant to section 55 of the Act?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the Act?

Background and Evidence

There was no dispute between the parties that a tenancy under the Act exists.

The Agents for the Landlord stated that a One Month Notice was sent to the Tenant by registered mail on July 15, 2020, as 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. In the hearing and the Application, the Tenant acknowledged receipt of the One Month Notice by registered mail on July 16, 2020, and Residential Tenancy Branch (the Branch) records show that the Tenant filed their Application seeking to dispute the One Month Notice on July 23, 2020, within the 10 day legislative time period for doing so set out under section 47 (4) of the Act.

The One Month Notice in the documentary evidence before me is in writing on the approved form, is signed and dated July 15, 2020, has an effective date of August 16, 2020, and states the following ground for ending the tenancy:

- 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.

In the details of cause section on the One Month Notice it states the following:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

1. June 9, 2020 Cara Mueller placed a dead mouse on the floor of the lobby.
2. November 22, 2019 Cara Mueller placed a dead rat on the floor of the lobby.
3. Improper behavior to the management June 16, 2020, December 20, 2019, May 19, 2018.
4. Dog not on leash inside the building and on the yard of the building and on the street.
5. leave fire door open February 2020, December 2019.

Although a substantial amount of documentary evidence was submitted for my consideration on behalf of both parties, during the hearing the parties focussed their evidence and testimony primarily on their allegations against one another in terms of harassment, significant interference, and unreasonable disturbance with each arguing that the other is engaging in inappropriate and abusive behavior and harassment.

The Agents for the Landlord also argued that the Tenant has engaged in illegal activity by propping the fire door open, failing to clean up after their dog, allowing their dog on the premises unleashed, allowing unapproved roommates in the rental unit, and leaving a dead mouse in front of the office door, all of which have or are likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The Tenant denied engaging in any illegal activity or having roommates without authorization to do so. The Tenant argued that neither the Landlord nor their Agents have submitted sufficient evidence to substantiate the ground selected for ending the tenancy on the One Month Notice. The Tenant also stated that they believe the One Month Notice has not been served in good faith as they believe it was served in retaliation for a civil matter arising as a result of an attack on their dog by the Agent P.D.'s foster dog.

The Landlord's Agents denied that the One Month Notice has been served in retaliation for the dog attack or that it has been served in bad faith.

Analysis

Based on the documentary evidence and testimony before me, I am satisfied that the Tenant was served with the One Month Notice by registered mail on July 16, 2020.

Section 47 (e) 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 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.

Policy Guideline #32 defines illegal activity as a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code and states that this 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.

Policy Guideline #32 also states that the party alleging the illegal activity has the burden of proving that the activity was illegal and 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.

Although substantial documentary evidence and testimony was provided by the Agents for the Landlord in support of the One Month Notice, no relevant statutes or bylaws were submitted for my consideration in support of the position that illegal activity has occurred. It was also clear to me from the documentary evidence and the testimony of the parties and their witnesses in the hearing, that there is an acrimonious relationship between the Tenant and the agents for the Landlord, with each party arguing that the other was significantly interfering with, unreasonably disturbing, or harassing them.

While the Landlord *may* have cause to serve a One Month Notice and end the tenancy pursuant to section 47 (1) (d) of the Act, or other sections as applicable, according to the One Month Notice in the documentary evidence before me the Landlord sought to end the tenancy in this case pursuant to section 47 (1) (e) (ii) of the Act. Section 47 (1) (e) (ii) of the Act requires that I not only be satisfied that the Tenant or a person permitted on the residential property by the Tenant has engaged in activity which has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property but that the activity engaged in constitutes illegal activity for the purposes of the Act.

As stated above, no relevant statutes or bylaws were submitted by the Landlord or their Agents in support of the position that illegal activity has occurred and while the Agents for the Landlord argued in the hearing that many activities engaged in by the Tenant and their guests constitutes illegal activity, such as having their dog off-leash or propping a fire door open, I do not agree. Further to this, the Tenant denied that either they or their guests have engaged in any illegal activity. Ultimately I find that the Landlord and their Agents fell significantly short of establishing, on a balance of probabilities, that any activity engaged in by the Tenant or a person permitted on the residential property by the Tenant which has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property constitutes a violation of federal, provincial or municipal law, let alone a serious violation that would warrant the end of the tenancy.

Based on the above, I therefore grant the Tenant's Application seeking cancellation of the One Month Notice dated July 15, 2020, and I order that the tenancy continue in full force and affect until it is ended by one of the parties in accordance with the Act.

As the Tenant was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72 (1) of the Act. Pursuant to section 72 (2) (a) of the Act, the Tenant is therefore entitled to withhold \$100.00 from the next months rent payable under the tenancy agreement or to otherwise recover this amount from the Landlord.

Conclusion

I order that the One Month Notice dated July 15, 2020, is cancelled and that the tenancy continue in full force and affect until it is ended by one of the parties in accordance with the Act.

Pursuant to section 72 (2) (a) of the Act, the Tenant is therefore entitled to withhold \$100.00 from the next months rent payable under the tenancy agreement in repayment of the filing fee, or to otherwise recover this amount from the Landlord.

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: September 1, 2020

Residential Tenancy Branch