



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC FFT

Introduction

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

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate.

As both parties were present service was confirmed. The parties each testified that they received the materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy originally began in 2017 under a fixed-term tenancy agreement. The current monthly rent is \$922.00 payable on the last day of each month. The rental unit is a suite in a multi-unit building.

The landlord submits that the parties agreed that the tenant could move into a different suite in the rental building in February 2020. The landlord testified that the tenant has failed to sign a new tenancy agreement since moving and there have been hostile interactions when the landlord has attempted to have the tenant enter into a new tenancy agreement. The landlord testified that the tenant is required to sign a new fixed-term tenancy agreement each year.

The landlord issued a 1 Month Notice dated July 31, 2020. The reasons checked off and highlighted on the 1 Month Notice for the tenancy to end are:

- Tenant is repeatedly late paying rent
- Tenant has engaged in illegal activity that has, or is likely to:[no additional reason checked off]
- Tenant has caused extraordinary damage to the unit or property

The landlord has also hand written an additional reason stating, “move to bigger suite did not pay balance over 6 month and reject to signing new leases”.

The landlord testified at the hearing that there has been no late payment of rent and no illegal activity and denied that they indicated these reasons on the 1 Month Notice. The landlord wrote on the 1 Month Notice that the extraordinary damage caused by the tenant is the fact that the tenant “occupy extra parking space”.

The landlord testified that they believe the tenancy should end as the tenant has refused to sign a new tenancy agreement as they have in the past. The landlord submits that the current suite occupied by the tenant is larger and the tenant should pay a higher rent. In their written submissions the landlord submits that the tenant should be paying an additional \$178.00 monthly for occupying the larger suite.

The landlord further submits that there have been hostile and threatening altercations with the tenant. The landlord writes in their submissions “He shouting with very ban

language to manager” and that the tenant “is a grumpy & irascible person so we need an order of possession to asking police come to help us”. The landlord also complained about the tenant’s use of parking space on the rental property and submitted into documentary evidence copies of correspondence issued to the tenant regarding the issue.

The tenant disputes that they have threatened or abused the landlord and states that they have simply asserted their right to bring disputes before this Branch.

In the portion of their application seeking an order of compliance the tenant writes:

Because no proper paperwork is being provided for the end of tenancy or the rent increases. - End of tenancy is incomplete and has no reason or cause. - Rent increases are way more than 2.6% and given on an index card. With no notice at all. - I wasn't given a copy of the original (3 years ago) rental agreement - I did my own inspection

In their submissions at the hearing the tenant made little reference to the issues identified in their written application and instead testified that there are a number of deficiencies in the rental unit they wish repaired.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord testified that many of the reasons indicated on the notice are invalid or have no basis. Specifically, the landlord stated that there has been no late payment of rent or illegal activity.

The landlord submits that the extraordinary damage being caused by the tenant is their use of an extra parking spot. I find that no reasonable interpretation of extraordinary damage could include using a parking space for its intended purpose of storing a vehicle. While I accept that the landlord takes issue with the tenant’s use of the space

and there is a dispute that the tenant is authorized to park in that particular space, I find that the characterization of this as extraordinary damage to be patently unreasonable and not at all supported in the documentary materials. Parking a vehicle, regardless of its insurance status, cannot be considered damage to the property much less extraordinary damage. I find little evidence that the parked vehicle has caused any structural damage or has had any impact on the property.

Section 47 of the *Act* sets out the reasons wherein a landlord may issue a notice to end tenancy. Hand writing an additional reason for issuing a notice does not elevate the landlord's complaints to becoming a valid basis under the *Act* for a tenancy to end. I find that the reason added, that the tenancy should end as the tenant has failed to sign a new tenancy agreement to not be one of the reasons set out in the *Act* allowing the issuance of a 1 Month Notice.

I note that the landlord's submission that the tenant is required to consistently renew their fixed term tenancy to have no basis in the *Act*. Residential Tenancy Policy Guideline 30 clarifies by writings:

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent Increases are met.

In the present circumstance, the parties testified that the tenant was permitted to move into a new unit in the same rental building and the terms of the existing tenancy agreement was carried over. I find that it is not open for the landlord to now demand that the tenant enter into a new tenancy agreement or to assert that the terms of the previous tenancy agreement is no longer valid. I find little evidence that the parties agreed upon a new amount of monthly rent and it is not open for the landlord to unilaterally impose a rental increase without following the proper legislative steps.

I find that the submissions of the landlord that the tenant has engaged in physical abuse, harassment and violence to not be supported in the evidence and have no air of reality. The landlord writes in their submissions "[The tenant] refuse to do what we asking him, just keeping shooting & cursing & spitting to manager". I find this statement is not supported in the documentary materials. There is no evidence to support that the tenant used or possessed firearms or any weapons that were shot. The landlord's

submission of the interaction with the tenant being adversarial may have some merit but an unpleasant conversation is not sufficient to give rise to a basis to end a tenancy. The landlord's testimony that the tenant threatened them was given little details, is not supported in the materials, disputed by the tenant, and the subsequent conduct of the landlord is inconsistent with someone who believes they were placed in physical danger.

I find that both individually and cumulatively the landlord has failed to meet their evidentiary onus to show that there is any basis for this tenancy to end. As such, I allow the tenant's application to dismiss the 1 Month Notice. The notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

I further note that any further issuances of notices to end tenancy without sufficient basis, or further attempts to coerce the tenant into entering a new tenancy agreement or issuances of rental increases in contravention of the Act may give rise to a basis for a monetary award in the tenant's favour for a breach of their right to quiet enjoyment.

I find insufficient evidence in support of the portion of the tenant's application seeking an order that the landlord comply with the Act, regulations or tenancy agreement. While the tenant submits that the rental unit requires repairs and maintenance I find the tenant's vague testimony on this point to be insufficient to establish that repairs are required or that the landlord is in breach of their duties by refusing or failing to perform reasonable repairs. I find that much of the written submissions of the tenant are simply general complaints or issues unrelated to the tenant's request for repairs. The tenant was given an opportunity at the hearing to make submissions on the portion of their application seeking an order of compliance, and the tenant refuted that the issues identified in their own written application form any part of their claim. I find that the tenant has not met their evidentiary onus on a balance of probabilities that the landlord has breached the Act, regulations or tenancy agreement such that an order is appropriate. I dismiss this portion of the tenant's application.

As the tenant was partially successful in their application they may recover the filing fee for this application. As this tenancy is continuing I allow the tenant to satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant's application to cancel the 1 Month Notice is successful. The notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

The balance of the tenant's application is dismissed without leave to reapply.

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 15, 2020

Residential Tenancy Branch