



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutha Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC,

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on August 7, 2020 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 18, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing. The tenant was assisted by a witness and an advocate. Each party had a chance to present their submissions, refer to the evidence, and respond to the submissions of the other. Throughout the hearing, I repeated submissions verbally and asked follow-up questions to ensure statements were clear to the other side.

Preliminary Matter

Submission and exchange of documentary and digital evidence is set out in the Residential Tenancy Branch Rules of Procedure. In particular, Rules 3.7, 3.10, 3.17 are relevant to this hearing.

The landlord provided documentary evidence; however, it was uploaded for this branch within days of the hearing, and the tenant stated they had not received this evidence. This was discussed at the outset of the hearing. One particular document concerns an inspection visit undertaken by the landlord. Rule 3.15 provides that the respondent's evidence must be received by the applicant and the branch “not less than seven days before the hearing.” Additionally, there was a video file provided, but the tenant stated they did not have a copy even though they had asked for it in advance.

Similarly, Rule 3.14 provides that the applicant must provide their evidence “not less than 14 days before the hearing.” In the record, evidence from the tenant appears on September 15, 2020.

I apply the Rules to determine that these pieces of documentary evidence from both the landlord and the tenant do not receive consideration in my decision below. I informed both parties of this in the hearing. Despite this, I reminded the parties that oral testimony stands as evidence, and all statements and submissions would receive consideration here.

Issue(s) to be Decided

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

If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The tenant provided a copy of the first tenancy agreement when they applied on August 7, 2020. It shows the tenant signed a tenancy agreement on July 21, 2010. The rent was \$600.00 per month at that time. They paid a \$300.00 security deposit at the start of the tenancy.

They provided a copy of the second more recent tenancy agreement, signed on February 1, 2018. It states: “this agreement is an extended continuation of our previously signed agreement.” This shows the rental amount of \$655.00 monthly, payable on the first day of each month. In the hearing the landlord pointed to a specific clause therein that specifies: “[The tenant] will keep the premises in good repair (reasonable wear and tear excepted); and agree to inspection of the premises by the Resident Manager.”

The tenant provided a copy of the One-Month Notice. This shows the landlord issued the document on July 31, 2020 by attaching a copy to the door of the rental unit.

On page 2 of the document, the landlord provided the reasons for giving notice:

- ☐ 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.
 - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site/property/park
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The details on page 3 are stated as follows:

April 1, 2020: [The tenant] was detected to have brought 2 large dogs into [the] unit. When property manager . . . knocked and inquired about dogs [the tenant] lied then was observed leaving unit with dogs . . . on same day. This is in direct violation of lease agreement #16 & 19 of rules and regulations.

Annual inspections on July 22/2020 . . . was revealed as well as evidence that [tenant] has been smoking in unit (neighbours can smell it in their units & windows walls & carpet saturated with nicotine yellowing and odor) as well as removing smoke detector [*sic*](Violation of section 4 of lease agreement [*sic*). When asked where the smoke detector was the tenant then had to spend several minutes searching for unit while assuring us she reinstalls it after her shower. After served with a notice to correct issues in a reasonable amount of time (served same day) with a [Full calendar [*sic*] week) [the tenant] did not comply.

In the hearing, the landlord spoke to the events listed in the details:

- a complaint prompted the landlord to investigate, and they captured an image of the pet in question on video
- the visit in July was for the reason of an annual inspection as provided for in the tenancy agreement – at that time the tenant stated the odour was because of cooking and scented candles
- the smoke detector was non-operational at the time of the visit in July, though the tenant stated they replaced it after every shower;

- the landlord provided that they acted on the smoke alarm issue “acting on behalf of tenants in the building”;
- they witnessed other incidents of dogs – the landlord spoke to the tenant to make sure it was not repeated; however, neighbours started calling.

More generally, the landlord reiterated that the details of the reasons for ending the tenancy were listed and plain on the One-Month Notice.

The tenant provided specific responses to the above testimony and evidence of the landlord:

- they were not sure whether they let the landlord know about the smoke detector sounding when the shower is on
- they verified they received a list of items from the landlord after the July 22 meeting and tried to accomplish most of those items; however, they were unable to shampoo the carpet
- 2 dogs were in the unit on April 2 as visitors – they did not see the clause regarding dogs in the tenancy agreement and “it was a one-time event”

The tenant’s advocate, on the tenant’s behalf, made certain points in the hearing:

- when the One-Month Notice was presented, the tenant was not aware of what the reasons were;
- the tenant was not given evidence or proof that the allegations are substantiated;
- the tenant did not interfere or disturb other tenants or the landlord – similarly, there was no evidence they put the property at risk or jeopardized the safety or health of others.

Analysis

Section 47 of the *Act* states, in part:

(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, or
 - (iii) put the landlord’s property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord’s property,

- (ii) 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. . .
- (iii) has jeopardized a lawful right or interest of another occupant or the landlord.
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;
- (h) the tenant
 - (i) has failed to comply with a material term; and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord spoke to the reasons in oral testimony; however, I find there is not sufficient evidence to show the One Month Notice is valid. Primarily, the details provided on page 3 of the document are not fulsome enough to give the tenant a full picture of the reasons the tenancy is ending.

Primarily, the details refer to the “lease agreement” and “rules and regulations”. There is no record that the tenant has a copy of these documents; similarly, the landlord did not provide a copy of the ‘rules and regulations’ into evidence in this hearing. For that reason, it is impossible to verify whether the tenant was aware of the rule regarding dogs in particular.

The specific reference to the “lease agreement” is section 4. The copies of the tenancy agreement provided are not divided into sections. I am unable to understand the reference. Also, the wording “this is in direct violation of lease agreement #16 & 19 of rules and regulations” is not clear: I cannot determine whether the numbers 16 and 19 refer to clauses in the tenancy agreement (in which there are no sections) or the rules and regulations (which were not provided for this hearing).

On that reason, the tenant is unable to answer in a fulsome manner to these details.

With regard to the individual reasons listed, the evidence presented falls short where the onus is on the landlord.

Though disconnecting a fire alarm is a serious matter, there is no evidence to show that the tenant was aware of its importance with regard to its disconnection. Documentation in this regard would be useful – fire codes or building restrictions on that would be useful. I find it reasonable that the landlord assists the tenant in rectifying this matter and ascertaining whether the alarm does in fact engage when the shower is on. That is not a legitimate excuse

for the tenant disconnecting the alarm (I find the evidence does show this); however, it will ensure the landlord undertakes due diligence in maintaining safety throughout the building.

In regard to the tenant's breach of a material term, there is no evidence to show how the matter was presented to the tenant. There is no reference to which term is being breached. There is likewise no record and no account to show that clear messaging went to the tenant. This requires: an identification of the problem to the tenant; a strict term that it constitutes a breach of the tenancy; that it must be fixed by a certain reasonable deadline; and failure to fix may end the tenancy.

For these reasons, the landlord has not met the burden of proof to show the One-Month Notice is valid. I order that the One Month Notice is cancelled.

Conclusion

For the reasons above, I order the One-Month Notice issued on July 31, 2020 is cancelled and the tenancy remains in full force and 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 *Act*.

Dated: October 2, 2020

Residential Tenancy Branch