



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on August 6, 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 15, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

One of the tenants and landlord attended the hearing, and I provided each the opportunity to present oral testimony and make submissions during the hearing.

Both parties confirmed receipt of the evidence prepared by the other. On this basis, the hearing proceeded. Witnesses appeared for both parties – these individuals were duly sworn in and attended the portion of the hearing concerning their direct testimony only.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One-Month Notice, pursuant to section 47 of the *Act*?

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

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord provided a copy of the tenancy agreement between the parties. The tenancy began on February 1, 2018, with the agreement signed on January 10, 2018. An agreement for rent subsidy shows the tenant's rent contribution to be \$320.00.

The tenant provided a copy of the One-Month Notice document. It shows the landlord issued the document on July 31, 2020 for a move out date of August 31, 2020. On page 2 of the document, the landlord provided the reasons that they issued this document:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The details on page 2 are stated as follows:

[The tenant] has been asked to get a mental health support worker many times & has not done so. His apartment has been inspected numerous times & is never clean or free of excess belongings. We are concerned for the safety of the other tenants in the building.

The landlord provided an undated letter containing their submissions. The letter provides that:

- “[the tenant] does not seem to be able to keep [their] apartment in a manner that is acceptable to our board.”
- There is concern about “the amount of belongings and collectibles in the apartment and the dirty dishes, waste and garbage in every room.”
- there were “many inspections and verbal encouragements with very little if any signs of acceptable improvement.”
- fire inspectors expressed concern and suggested the unit be reviewed by the fire department – the enclosed report gives ratings for separate rooms: with the highest concern being the bedroom and kitchen, at 6 out of a 9 rating – sample pictures are provided to show examples of what each rating looks like for separate rooms
- also: “[the landlords] are concerned that we may have cockroaches or other pests brought into the building”

A September 8, 2020 letter from the “off-site Tenancy Manager” notes their concern with a “hoarding issue” which has become a “safety concern for all the tenants.” They describe an incident on July 26, 2020 when they attempted to inspect the apartment.

There are letters to the tenant directly setting out the concerns, dated December 14, 2019 and January 15, 2020; these note there is no improvement to the state of the unit. There are minutes of past board meetings that show the issue of the rental unit was on the agenda on each successive meeting.

In the hearing, the landlord stated that even within the first couple of weeks of the tenancy there were “too many articles” in the unit. On the plan of action and communication, the tenancy manager met with the tenant “fairly often” and would report back on this to the board monthly meetings. The landlord responded to the tenant’s submission to say that the property manager would frequently visit and inspect many units in the building, with some units requiring more frequent visits than one time per month, often preceded by a phone call. The landlord also reiterated that the tenancy agreement contains a clause providing for the tenant taking good care of the unit. Each unit also keeps a copy of the rules on the inside of the unit door. A submitted copy shows: “Keep all areas of apartment clean; kitchen, bathroom, carpets, floors.”

The tenant provided a written statement. They provide that a fire inspection revealed no high risks in their unit. An exterminator in July 2020 stated: “there were no bugs/rodents or infestations of any kind in my unit.” With these two inspections, they conclude they are not “jeopardizing the health, safety or lawful right of anyone during my tenancy.” The tenant submitted copies of all documents provided by the landlord in this hearing.

In the hearing, the tenant, with submissions from their advocate, stated that:

- there was no storage unit provided;
- there is nothing in the landlord’s evidence to show monthly inspections took place – additionally, it has been “random”, maybe once every six months;
- there are no notices on the bulletin board, and nothing written to show a notice of entry – the tenant faces challenges in remembering information if not written;
- directions or observations about their individual unit are vague.

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

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 evidence presented does not substantiate the sole reason indicated on page 2 of the document.

It is clear from the evidence that the tenant has a larger quantity of personal property within the rental unit. It does not follow that this seriously jeopardizes the health and safety, or lawful right or interest of the landlord.

The fire department and made a thorough assessment on the state of the unit. They made specific recommendations on specific items; however, I find the evidence of their visit also shows “hoarding”, as alleged by the landlord, is not a serious concern.

Secondly, there is no evidence that rodents or insects have created a problem in the unit. The landlord did not provide definitive proof that pests became problematic.

The tenant provided that there was no storage area provided. The tenancy agreement item 19 states: “If there is a storage area for tenants, the tenant will make sure their belongings are put in the proper place, as shown to them by the landlord.” The tenant, via their advocate, submitted a storage space was shown to them on move-in; however, after that there was no mention or questions about its use. I find a lack of clarity on this point contributes to the tenant’s ability to sort essential from non-essential items. This measure is something tangible, with the aim of assisting in cleanliness of the unit. Written rules on the back of the door make follow-through of instructions difficult when the resources available are not set out.

The landlord provided accounts from the property manager who made periodic inspections. The notice of upcoming inspections is not at issue; rather, the findings of inspections as they became known to the tenant are the more important consideration here. In particular:

- The letter dated December 14, 2019 frames the issue from more of an accessibility concern, to advise that flow within the unit is interrupted with clutter.

- The January 15, 2020 letter points to putting other tenants at risk because of “unacceptable housekeeping efforts”. This letter advises the next visit at the end of January would result in an eviction if there were not improvements.
- The July letter sets out “There needs to be a through cleaning and decluttering of your apartment if you wish to continue as a tenant. . .”

The last letter was the last communication provided to the tenant prior to the end of tenancy. There is no accounting for the six-month gap between the January letters and the July notification. I find, on a balance, that communication was minimal in the January-to-July timeframe, aside from face-to-face difficulties that likely ensued with emergency health measures in place.

Finally, the sensitive issue of the tenant’s own ability to maintain order within the unit was mentioned on the One-Month Notice. On the document itself, the connection between the tenant obtaining a “mental health support worker” and the state of cleanliness of the unit is not plain to see. The way it is phrased on the One-Month Notice itself seems to suggest the tenant not obtaining such assistance is a reason for eviction.

There is evidence the matter became stressful for the tenant and there was an instance of regretful behaviour. While a support worker would certainly assist in this regard, the frank reality portrayed by the tenant’s advocate is that assistance is difficult to obtain. The tenancy shall not be conditional on the availability of a support worker.

On my review of the evidence, I find there is a situation in which the tenant needs more support than that in place with relatively infrequent inspections. I find it more likely than not that communication to the tenant is not clear, and somewhat vague without specific mention of items requiring cleaning or re-ordering. In short, I find the tenant would benefit from communication regarding specific actions regarding specific items or points of order within the unit. I find it reasonable to accept that the problem may be overwhelming, with no perceptible place to start. As imposing it may be on the structure of management within the building, I find more specific instructions would afford the tenant the benefit of taking ownership of the issue and making progress in measured, specific steps.

With the primary reason being the non-specific communication on the issue of unit cleanliness, I order the One-Month Notice to be cancelled. The evidence does not show communication was clear in a situation where the tenant faces challenges in perception and awareness.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One Month Notice issued on July 30, 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 5, 2020

Residential Tenancy Branch