



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The tenant attended the hearing with 2 Advocates, one being a student and the other observing only. The student assisted the tenant with the hearing process. The landlord was represented at the hearing by an agent, who was accompanied by another person who also observed only. The tenant and the landlord's agent each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the parties agreed that the spelling of the name of the landlord company is incorrect on the Tenant's Application for Dispute Resolution. The parties agreed to an amendment, and the frontal sheet of this Decision reflects that amendment.

The landlord has provided no evidentiary material and agrees that he received the Tenant's Notice of Dispute Resolution Proceeding, copies of Caution Notices and some other material. I find that the tenant has provided the evidence to the landlord in accordance with the *Act* and the Rules of Procedure, and all evidence has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause or End of Employment was issued in accordance with the *Residential Tenancy Act*?

- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically with respect to Caution Notices?

Background and Evidence

The landlord's agent testified that this tenancy began in about 2015, as a guess, and was fixed for the first year and then reverted to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$725.00 is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. There is a written tenancy agreement, but a copy has not been provided for this hearing. The rental unit is an apartment on the first floor of a 4 story apartment building, and the landlord's agent also resides on the property.

The landlord's agent further testified that on August 19, 2020 the landlord's agent posted a One Month Notice to End Tenancy For Landlord's Use of Property or End of Employment (the Notice) to the door of the rental unit, and the tenant has provided a copy as evidence for this hearing. It is dated August 19, 2020 and contains an effective date of vacancy of September 30, 2020. The reasons for issuing it state:

- 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 caused extraordinary damage to the unit/site or property/park.

The landlord's agent has been managing the apartments for 10 years and has only issued Caution Notices to tenants on average of once every 5 years for the 54 rental units, which is the landlord's responsibility. Six Caution Notices have been given to the tenant since 2015. The first was for smoking in the rental unit in 2015, and then none; something has occurred but the landlord doesn't know what. In the recent 6 months the landlord's agent has issued 5 more Caution Notices.

The tenant's sister goes into and out of the apartment building on a scooter, and "took out" the front wall where the front door is on the building. She got part way through and hit the wall damaging the maple paneling, basically carelessness and negligent.

The tenancy agreement specifies no pets, but in March 2020 the tenant had a boa constrictor in an aquarium in the dining room. The landlord didn't know about the unauthorized pet until the landlord's agent had to do a plumbing repair. The landlord saw the snake in the large aquarium in the dining room of the rental unit, which puts an extraordinary risk to all tenants in the building. This was the second incident of unauthorized pets; the first was a cat and the landlord told the tenant that he couldn't keep the cat, and that a pet deposit would also be required. There is a waiting list of tenants wanting cats, there are currently about 20, and the building is at its limit of cats. It's specified in the Application to Rent that the landlord tries to keep it to 1 mature cat because the landlord needs some assurance that tenants will take care of their pets. The tenant immediately complied and got rid of the cat, but the landlord's agent doesn't know how long the boa constrictor was in the rental unit. According to other tenants it was there for months and the tenant and his sister chased it around the suite for months.

The landlord's agent also testified that a visitor of the tenant was wandering around the building at 3:00 a.m. and had keys from the tenant. The visitor was going in and out, and other tenants complained about the noise.

In July 2020 the same visitor and tenant were seen on camera propping open the exit door at the rear of the building near the tenant's rental unit. New steel doors were installed last November, including the exit door near the tenant's unit which also has a sign to keep the door closed. The stick that was propping the door open was removed by the landlord's agent. The camera also shows that the door was open for over 2 hours.

The sixth Caution Notice was issued in August, 2020 for smoking in the rental unit. Multiple complaints were made by other tenants, and the landlord doesn't seem to be getting voluntary compliance from the tenant.

The landlord has a move-out sheet, and a copy was given to the tenant on August 1, 2020 after Caution Notice #4 was issued. It's a check-list of things that a tenant should do to ensure that the security deposit gets returned at the end of a tenancy. The landlord hoped the tenant would voluntarily comply so that the landlord wouldn't have to issue a notice to end the tenancy that might affect the tenant's references. The landlord would have given a good reference if the tenant had moved out at that time.

The tenant testified that he enjoys living in the rental unit and tries to comply when he receives Caution Notices.

The tenant uses a mobility scooter due to a bad accident, lives on a pension, and the tenant doesn't work.

Each of the Caution Notices contains a threat to evict.

SUBMISSIONS OF THE LANDLORD:

If an Order of Possession is granted the landlord is willing to give the tenant back his rent for October, 2020 and the security deposit.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The tenant has limited income but has paid his rent on time.

If there's a threat to evict, it's not a Caution Notice. The notices demonstrate a systemic use of psychological and emotional abuse of the tenant under section 45.1(d)(i) from the landlords.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the tenant does not dispute the allegations, but the tenant's position is that the landlord issued Caution Notices, all with a threat of eviction, and receiving the move-out checklist was a tactic to have the tenant move out without the landlord ending the tenancy in accordance with the law.

I have reviewed the One Month Notice to End Tenancy For Cause or End of Employment, and I find that it is in the approved form and contains information required by the *Act*.

I have also reviewed the Caution Notices issued by the landlord, and although each contains a section entitled "The Residential Tenancy Act, Section 47 (1) – Grounds For Termination," I don't see it as a threat but as a caution to the tenant that the tenancy may be at risk due to the reasons for issuing the Caution Notices. They each also contain the reasons or allegations regarding breaches. The tenant didn't deny any of the allegations.

In the circumstances, I find that the landlord had cause to issue the notice to end the tenancy and the tenant's application for an order cancelling it is dismissed.

The *Residential Tenancy Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord.

Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: October 07, 2020

Residential Tenancy Branch