



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, 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);
- An order restricting or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement; 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, the Landlord G.M., and an agent for the Landlord A.A. (the Agent), who provided affirmed testimony. The Landlord and Agent acknowledged receipt of the Application and Notice of Hearing and both parties acknowledged receipt of each other's documentary evidence. Neither party raised concerns regarding the service of these documents or acceptance of them by me for consideration. As a result, the hearing proceeded as scheduled and the documentary evidence of both parties was accepted for consideration. 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 these matters in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant facts 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

Although G.M. referred to themselves as an agent for the landlord during the hearing, they are listed as the landlord on the tenancy agreement. While I appreciate their testimony that they, and other family members, manage the property for their parents who are the property owners and do not speak English as a first language, as G.M. is listed as the landlord in the tenancy agreement, I find that they are the landlord for the property and not an agent for the landlord. As a result, I have referred to them as the Landlord throughout this decision.

Although another respondent was also listed by the Tenant in the Application, A.M., as only G.M. is listed as the landlord in the tenancy agreement, I have therefore named only G.M. as the Landlord in this decision.

Preliminary Matter #2

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the other claims by the Tenant are not sufficiently related to the One Month Notice or continuation of the tenancy, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order restricting or setting conditions on the Landlord's right to enter the rental unit; and
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the One Month Notice and recovery of the filing fee.

Preliminary Matters #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Issue(s) to be Decided

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

If the Tenant is unsuccessful in cancelling the One Month Notice or the One Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on May 7, 2018, states that the fixed term of the tenancy agreement commenced on May 15, 2018, and ended on May 14, 2019, after which time the tenancy became month to month. The tenancy agreement states that rent in the amount of \$1,200.00 is due on the 15th day of each month and that a \$600.00 security deposit was paid. At the hearing the parties confirmed that these are the correct terms of the tenancy agreement, except for the date upon which rent is due, which both parties agreed was the 1st day of each month. The parties stated that rent is currently \$1,400.00 per month.

The Landlord stated that on September 1, 2020, a One Month Notice was personally served on the Tenant and the Tenant confirmed receipt on that date during the hearing. The One Month Notice in the documentary evidence before me is signed and dated August 31, 2020, has an incorrect effective date of September 30, 2020, which is automatically corrected to October 31, 2020, pursuant to section 53 of the Act, and states the following grounds for ending the tenancy:

- The Tenant is repeatedly late paying rent;

- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- The Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or the lawful right of another occupant or the Landlord.

In the details of cause section of the One Month Notice it states that the Tenant is causing unnecessary stress to the Landlord's agent, the Tenant is not allowing access for inspection when given 24 hours notice, and the Tenant has paid rent late.

When asked about the late payment of rent, the Landlord and the Agent stated that the Tenant paid rent late on August 4, 2020, and that they think there was an additional late payment of rent within the last year but could not be sure of the date. The Tenant argued that rent was not paid late and stated that although there was an agreement between the parties for rent to be paid in cash and picked up by the Landlord or their agents, the Landlord and/or their agents routinely fail to pick up the rent on time, despite it being ready and available. The Tenant also stated that the Landlord wants rent paid in cash but refuses to provide proper rent receipts.

The Landlord stated that the Tenant has significantly interfered with or unreasonably disturbed them by contacting them regarding tenancy issues, which they do not wish to deal with as they are busy and find the Tenant disrespectful, and despite their direction to the Tenant that they contact their brother, who is listed as the emergency contact on the tenancy agreement, and their brother's wife, in relation to tenancy matters. The Landlord stated that the Tenant used to regularly deal with their brother regarding tenancy matters as directed, but recently has blocked their brother's phone number and is refusing to deal with anyone but the Landlord themselves. The Landlord stated that this is causing them significant unwanted stress as they do not wish to deal with the Tenant.

The Tenant agreed that they used to be comfortable contacting the Landlord's brother but stated that this changed when they contacted the Landlord's brother one evening regarding a lack of hot water. The Tenant stated that the Landlord contacted them the next day furious that they had contacted their brother in the evening as the Landlord did not see the lack of hot water as an emergency and stated that this had disturbed their brother. As a result, the Tenant stated that they no longer feel comfortable dealing with the Landlord's brother regarding tenancy issues and have been contacting the Landlord instead.

The Landlord stated that the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord by refusing to allow them or their agents access to the rental unit for inspections when given proper notice. The Landlord stated that the Tenant is using the pandemic as an excuse to refuse them access and stated that during an inspection on July 1, 2020, the Tenant refused to grant them access to two bedrooms. The Landlord also stated that they were frightened of the Tenant and therefore had safety concerns. When asked to describe behavior by the Tenant that would be cause for them to fear for their safety, the Landlord acknowledged that the Tenant had not been threatening but was simply disrespectful and dramatic.

The Tenant denied refusing the Landlord access to the rental unit for the purpose of an inspection and stated that the Landlord was in fact granted access to the rental unit on July 1, 2020, which the Landlord agreed was correct. However, the Tenant acknowledged that the Landlord was not granted access to two bedrooms as they stated that their young children and their elderly mother were present in those rooms. The Tenant stated that their mother was recently ill and does not have health coverage as she is visiting from another country and therefore they need to be very cautious during the pandemic. The Tenant stated that they requested a delay in the date of the inspection to allow them time to make arrangements for their mother and their children to be somewhere else, which was refused. The Tenant stated that the Landlord has also made no additional attempts to schedule an inspection for those rooms, which are in good condition. As a result, the Tenant did not see this as a reasonable or valid reason for ending the tenancy.

The Tenant also sought recovery of the filing fee in addition to cancellation of the One Month Notice. Both parties submitted documentary evidence in support of their positions, including written submissions, copies of correspondence by text message and email, and the tenancy agreement.

Analysis

Section 47 of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- the tenant is repeatedly late paying rent;
- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; and/or

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

Based on the documentary evidence and testimony before me, I am satisfied that the Tenant was personally served with the One Month Notice on September 1, 2020.

Although the Landlord sought to end the tenancy due to repeated late payment of rent, the Landlord provided only one late payment date, August 4, 2020, and although they stated there was another late payment in the last 12 months, they could provide no details regarding this late payment. The Tenant denied paying rent late and stated that it is the Landlord and their agents who are failing to pick up rent on time as agreed upon, despite rent being available on time. The Tenant also stated that the Landlord refuses to accept other reasonable payment methods, such as etransfer and does not give proper rent receipts.

Policy Guideline 38 states that three late payments are the minimum number of late payments required to justify the issuance of a One Month Notice under section 47 of the Act. As the Landlord stated that there had only been two late payments in the last 12 months, one of which they could provide no details about, I am not satisfied that the Landlord has cause under section 47 of the Act to end the tenancy for repeated late payment of rent. Further to this, even if I were satisfied that the Tenant paid rent late on August 4, 2020, which the Tenant denied, this would not constitute grounds to end the tenancy as late rent payments made between March 18, 2020, and August 17, 2020, cannot be relied upon for ending a tenancy under section 47 of the Act pursuant to section 7 of the COVID 19 Regulation and section D of Policy Guideline 52.

Having made this finding, I will now turn my mind to whether or not I am satisfied that the Tenant has significantly interfered with or unreasonably disturbed the Landlord. After considering the testimony of the parties and the documentary evidence before me, it is clear to me that Landlord wishes to end the tenancy primarily because they no longer want to deal with the Tenant, whom they find disrespectful. It is also clear to me that the Landlord finds the obligations incumbent upon them as a landlord under the Act and the tenancy agreement onerous, disruptive, and stressful.

Although I appreciate that the Landlord does not wish to engage with the Tenant due to what is clearly a degrading interpersonal relationship between them, the Act does not allow landlords to end tenancies because they do not like or get along with their Tenants on a personal level or find the exercise of their duties as a landlord onerous,

disruptive, inconvenient, or stressful. Although the Landlord argued that the Tenant is significantly interfering with or disturbing them by contacting them regarding tenancy matters, I disagree. I find that the communications characterized by the Landlord as disruptive and relied upon by them as a basis that the Tenant is significantly interfering with or unreasonably disturbing them are in fact routine communications regarding tenancy matters, for which the Tenant has a legal right under the Act to contact their landlord, and for which the Landlord has a legal obligation to respond. As a result, I am not satisfied that the Tenant has significantly interfered with or unreasonably disturbed the Landlord as alleged in the One Month Notice.

Despite the above, the parties agreed that continued direct communication between the Landlord and the Tenant was not in the best interest of the parties and the Landlord instead designated their family member, A.A. to act as their agent and primary contact for the Tenant. A.A.'s phone number, which has been recorded on the cover page of this decision, was provided to the Tenant during the hearing for this purpose, and the parties agreed that the Tenant would use A.A. as the primary contact regarding tenancy matters in the future.

Although the Landlord argued that they are afraid of the Tenant, they submitted no compelling evidence to support this position and their own testimony demonstrates that the Landlord simply finds the Tenant difficult and unpleasant to deal with, not threatening. As a result, I am not satisfied that there is any level of safety risk posed to the Landlord or their agents by the Tenant.

Finally, the Landlord argued that the Tenant has seriously jeopardized their lawful right or interest by refusing to allow them to inspect the rental unit, even when proper notice under the Act has been given. For the following reasons, I do not accept this argument. First, the parties agreed in the hearing that the Landlord was in fact permitted access to the rental unit on July 1, 2020, for the purpose of an inspection. Second, the parties agreed that it was only two rooms that the Landlord was unable to view on July 1, 2020, as the Tenant's mother and children were sequestered in those rooms due to fear of COVID 19 transmission. Third, the Landlord stated in the hearing that they had made no further attempts to view these two rooms despite the fact that the Tenant was amenable to such subsequent inspections, provided they received sufficient notice to allow their mother and young children to be out of the rental unit to prevent any risk of COVID 19 transmission.

Based on the above, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that they had cause under section 47 of the Act to serve the One Month

Notice. As a result, I cancel the One Month Notice and order that it is of no force or effect.

As the Tenant was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, the Tenant is therefore entitled to a Monetary Order in the amount of \$100.00. The Tenant is authorized to withhold \$100.00 from the next months rent payable under the tenancy agreement in recovery of the \$100.00 filing fee, in lieu of serving and enforcing the Monetary Order, should they wish to do so, pursuant to section 72(2)(a) of the Act.

For the benefit of both parties and in an effort to promote clarity and prevent future disputes, the Tenant is advised that they are required pursuant to section 26(1) of the Act, to pay rent on time and in full as agreed upon in the tenancy agreement and the Landlord is advised that they are required, pursuant to section 26(2) of the Act, to provide the Tenant with rent receipts for rent paid in cash. The Tenant is also advised that that they must not prevent the Landlord from accessing the rental unit, or any portion thereof, if the Landlord has complied with the relevant portions of section 29 of the Act. The parties are therefore forewarned that failure to comply with these requirements may constitute a breach of a material term of the tenancy agreement or grounds for ending the tenancy, or both.

Conclusion

The One Month Notice is cancelled and of no force or effect. I therefore order that the tenancy continues until it is ended by one of the parties in accordance with the Act.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$100.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The Landlord is cautioned that costs of such enforcement are recoverable from them by the Tenant.

Pursuant to section 72(2)(a) of the Act, the Tenant is authorised to withhold \$100.00 from the next months rent payable under the tenancy agreement in lie of serving and enforcing the Monetary Order, should they wish to do so.

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: November 5, 2020

Residential Tenancy Branch