



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, RP, LRE, OLC
 CNR, LRE, RR, AS, RP
 MNDCL-S, OPC, FFL

Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenant and 1 application made by the landlords, which have been joined to be heard together.

The tenant has applied in the first application for:

- an order cancelling a notice to end the tenancy for cause;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property;
- an order limiting or setting conditions on the landlord's right to enter the rental unit; and
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant's second application seeks:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order allowing the tenant to assign or sublet because the landlord's consent has been unreasonably withheld; and
- an order that the landlord make repairs to the rental unit or property.

The landlord's application seeks:

- an Order of Possession for cause;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenant for the cost of the application.

The tenant and the landlord named in the tenant's second application attended the hearing, and the landlord also represented the landlord companies named in the other applications. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions.

At the commencement of the hearing, I alerted the parties that the Rules of Procedure specify that multiple applications in a single application must be related, and that due to the Rules and time constraints the primary applications refer to a notice to end the tenancy, and the remaining applications will be dismissed with leave to reapply.

Also during the course of the hearing the landlord indicated that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given to the tenant, however the tenant paid the amount overdue, so the landlords have not pursued it, and I therefore cancel it.

Issue(s) to be Decided

The issue remaining to be decided in this hearing is:

- Have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reason(s) for issuing it, or should it be cancelled?

Background and Evidence

The landlord testified that this fixed-term tenancy began on September 1, 2018 and expired on July 31, 2019, but was extended to July 31, 2020, and the tenant still resides in the rental unit. Rent in the amount of \$3,000.00 is payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$1,500.00 which is still held in trust by the landlords, and no pet

damage deposit was collected. The rental unit is a high-end condominium in a high-rise building. A copy of the extension of the tenancy agreement has been provided as evidence for this hearing, and the tenant has provided a copy of the tenancy agreement.

The landlord further testified that the extension to the tenancy agreement was drawn up on April 1, 2019 and the landlord signed it on the 8th. The parties also both signed a Mutual Agreement to End Tenancy effective on July 31, 2020, which is attached to the Extension, and copies have been provided for this hearing, however the tenant didn't sign the extension to the tenancy agreement.

On September 26, 2020 the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause, and a copy has been provided as evidence for this hearing. It is dated September 26, 2020 and contains an effective date of vacancy of October 31, 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;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord further testified that the strata advised the landlord that the tenant was running an Air BNB and the owner was fined \$2,000.00, which was minimal because the by-law fines are \$1,000.00 per occurrence. A hearing with the strata was held on August 19, 2020. Due to the amount of time that the tenant had advertised and the number of bookings on her site, there were substantial fines, but at the end of the hearing, the strata only fined the owner \$2,000.00 because the landlord didn't know about it until advised by the strata. The first 3 reasons on the One Month Notice to End Tenancy for Cause relate to the Air BNB.

Initially, the tenant said she didn't have a pet, but countless emails have been sent to the tenant to remove her cats, and did not ask to have a pet. A demand was made to remove the pets, and the tenant ought to do so or at minimum, pay a pet deposit. The landlord did a walk-through and didn't see any cats, however on October 10, 2020 a

neighbour next door received a letter from the tenant asking if her cat was there, which was after the landlord had completed the walk-through.

The tenant testified that the landlord's testimony about an Air BNB is false. The tenant has a police report indicating that someone hacked into the tenant's computer, and the tenant's identity was stolen. The evidence to support the strata hearing was hear-say only and there was no actual evidence.

The tenant has removed the cats and is willing to pay a pet damage deposit to get them back, which seems to be fine with the landlords, so long as the tenant pays the pet damage deposit.

The landlords have been trying to bully the tenant out of the suite since rent was missed due to COVID-19, and told the tenant that the tenant cannot get a roommate. The Residential Tenancy Branch said that the tenant can get a roommate, and now the tenant can pay the outstanding rent.

The tenant had surgery on November 12, 2020 and the cast will be removed from her leg after 3 months.

There is no Air BNB, and the tenant has taken care of the issues.

SUBMISSIONS OF THE LANDLORD:

The landlords feel entitled to take possession and would consider a slight delay to provide the tenant more time to recuperate, and the landlords would consider an Order of Possession effective at the end of January, 2021.

SUBMISSIONS OF THE TENANT:

This started when the tenant fell into arrears of rent, and that's what it's about. The tenant has fought about the Air BNB issue since the beginning. The tenant now has a roommate, so the payment of rent will not be a problem.

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 reasons for issuing it are in dispute.

I have reviewed all of the evidence provided by the parties, and there is absolutely no evidence that the tenant's identity was stolen or any police report.

The landlord issued the One Month Notice to End Tenancy for Cause on September 26, 2020, but the parties signed a Mutual Agreement to End Tenancy on April 8, 2019 effective July 31, 2020. The emails exchanged between the parties indicate that the tenant is in arrears of rent, has not paid a pet damage deposit, and until those matters are cleared up, the landlords will not be consenting to roommates. The Addendum to the tenancy agreement specifies no pets allowed on the property. It also states that violation of the provisions in the Addendum are reasonable and material to the tenancy agreement, and cause for a notice to end the tenancy. The tenant signed the Pet Agreement, but has not paid the Pet Damage Deposit despite several notices to do so.

In the circumstances, I find that the landlord has issued the One Month Notice to End Tenancy for Cause in accordance with the Residential Tenancy Act, and the landlords have established the reasons for issuing it.

The tenant's application to cancel the Notice is dismissed.

The landlord indicated that the landlords will be content with ending the tenancy at the end of January, 2021, and given that the landlord has consented, I grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on January 31, 2021.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee, and I order that the landlords be permitted to keep that amount from the security deposit held in trust.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 5, 2020 is hereby cancelled.

The tenant's application for an order cancelling a One Month Notice to End Tenancy for Cause is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on January 31, 2021 and the tenancy will end at that time.

I further order the landlords to keep \$100.00 of the security deposit held in trust as recovery of the filing fee.

All other applications are hereby dismissed with 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: December 05, 2020

Residential Tenancy Branch