



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE

Introduction

The tenant filed an Application for Dispute Resolution on September 30, 2020 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). Additionally, they applied for an order that suspends or sets conditions on the landlord’s right to enter the rental unit. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on December 7, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. Each party was provided the opportunity to present oral testimony and make submissions during the hearing.

The landlord confirmed receipt of the Notice of Dispute Resolution, and both parties acknowledged receipt of the other’s prepared evidence.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One-Month Notice?

Is the tenant entitled to an order that suspends or sets conditions on the landlord’s right to enter the rental unit or site, pursuant to section 70 of the *Act*?

Background and Evidence

Both parties agreed that there is a tenancy agreement in place, with the tenancy starting in 1995. The rent amount changes with income. On their Application, the tenant provided that the rent amount is \$390 per month, as of the date they applied for this hearing.

The landlord issued the One-Month Notice on September 22, 2020, with the date for the tenant to move out on October 31, 2020. The landlord provided the reason for their issuance of the document: this concerns the breach of a material term of the tenancy agreement. The details listed on page three give a brief timeline:

- the tenant admitted to smoking in the rental unit – against the rules of the landlord, because this “poses a health and fire risk to all tenants”;
- the tenant received multiple warnings in the past, and received a notice to end tenancy in March 2020 -- the landlord did not pursue this notice because of eviction restrictions in place at the time;
- another incident in July prompted the landlord to issue this One-Month Notice.

Both the tenant and their family member provided written statements that set out the history of the issue with the tenant in the landlord’s property. This has been ongoing since a policy change in 2015. In 2018 the tenant signed an addendum to the tenancy agreement that gave effect to this policy. After this, they received a warning letter in 2019 and an incident in March 2020 prompted the landlord to issue a notice to end tenancy. In 2020, there was a previous arbitration decision in which a separate One-Month Notice was set aside due to what the arbitrator found to be insufficient evidence.

At the outset of this hearing, with the subject being the landlord’s issuance of the One-Month Notice on September 22, 2020, the representatives for each of the landlord and tenant stated that they were willing to settle this matter. The objective of this hearing was a focused discussion on the terms of that settlement.

Settlement Agreement

The *Act* section 63 provides that the Arbitrator may assist the parties in settling their dispute. The settlement may be recorded in the form of a decision.

Prior to the hearing, the landlord sent a settlement proposal to the tenant, including a new tenancy agreement, and details of an enhanced smoke monitoring system with installation. This continues the landlord-tenant relationship with ongoing support from community living support workers and scheduled monthly inspections. This is conditional upon the tenant continuing with their medication regime.

This formed the basis for the discussion in the hearing to settle the matter of the One-Month Notice and the landlord’s entry into the unit. During the hearing, the parties resolved their

dispute. The parties agreed to the following final and binding settlement of all issues currently under dispute at this time.

The specific terms of the agreement are:

1. A new tenancy agreement will contain the stipulation that a restriction on smoking in the unit is a material term of the agreement. To do this, the manager as the drafter of the agreement shall incorporate the existing "smoke free addendum" that the tenant previously signed on October 18, 2018 into the tenancy agreement.
2. The tenant has an individual service plan in place; this ensures regular scheduled visits with a case worker who delivers ongoing support. The tenant's visits with a case worker shall continue on a weekly basis, with reports on these meetings to the landlord. In the event of difficulties, the tenant shall give consent to the case worker to call their immediate family member.
3. The tenant shall continue the prescribed medication in line with ongoing treatment.
4. The landlord shall inspect the rental unit on a monthly basis. This shall be a fixed date and time, to be set by the parties. The landlord is responsible for notifying the tenant of any cancellation twenty-four hours in advance. On this point the landlord stipulated that there may be exceptions where twenty-four-hour notification of a cancellation is not possible in exceptional circumstances. The inspection allowed shall be undertaken by any authorized representative of the landlord.
5. The balcony door being ajar causes smoke to enter the unit; however, the lock mechanism on the door is faulty, and this raises the risk of the tenant being locked on the balcony outside of the unit. The landlord shall undertake the replacement of the balcony access door within the unit, due to the noted faulty lock mechanism on the door itself. With a replacement, the tenant and landlord shall work together to ensure there is regular maintenance of the door to ensure it works correctly.

Once the door is repaired to the point where there are no potential issues with smoke entering the unit, the parties shall examine the issue of installation of an enhanced smoke detection system. The issue of the enhanced smoke detection system, and its installation, requires further agreement between the parties in regard to the cost apportionment, a suitable payment plan, and its ongoing monitoring through an app.

After discussion and review of the details, the landlord agreed that the terms listed verbally in the hearing satisfy their requirements going forward.

Conclusion

The landlord and the tenant have reached a settled agreement. This is in accordance with section 63 of the *Act*. The parties make this agreement on a voluntary basis and with the understanding of the nature of this full and final settlement of this matter.

The landlord's One-Month Notice dated September 22, 2020 is cancelled and of no force or effect. The tenant's request for an order that suspends or otherwise sets conditions on the landlord's right to enter the unit is settled with reference to the above terms and conditions.

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: December 22, 2020

Residential Tenancy Branch