



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crystal Ridge Manor Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its employees and advocate. The tenant was represented by their family members.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began 5-years ago. The current monthly rent is \$1,931.06 payable on the first of each month. The rental unit is a suite in a 23-unit independent living facility. The landlord issued a 1 Month Notice dated October 30, 2020 indicating the reasons for the tenancy to end as:

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.*

The landlord submits that the tenant has experienced a steady decline in their mental state so that they are often confused, disoriented, argumentative and unmanageable to staff and fellow residents. The landlord cites an incident on July 29, 2020 when the tenant confused their relationship with another occupant of the building requiring that police be called for assistance. The landlord says that the confusion of the tenant causes disturbance to the other occupants of the building and poses a significant risk to the property by leaving exterior doors unlocked.

The landlord submitted a written timeline of events and some letters from family members of residents reporting on incidents where the tenant has had outbursts. The landlord submits that they are not equipped nor intended to provide care for residents with significant medical issues and cognitive difficulties.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord submits that the tenant's behaviour has been a significant interference and unreasonable disturbance to the other occupants, has seriously jeopardized the health, safety or lawful rights of other occupants and has put the landlord's property at significant risk.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. While I accept the evidence of the parties that the tenant suffers from dementia and there has been some decline in their cognitive abilities over the course of the tenancy, I am not satisfied that the tenant's behaviour and actions have been such that it can properly be characterized as a basis for a tenancy to end.

The landlord submits that the tenant's cognitive abilities has declined to an extent where they mistakenly identify occupants as other individuals and cannot be convinced otherwise. I find that much of the evidence regarding the tenant's behaviour to be concerning but not to the degree, frequency or severity that it becomes a significant interference and unreasonable disturbance. I find that the evidence of a particular incident in July 2020 when the tenant mistook another occupant for a romantic partner to not be sufficient to be characterized as a significant or unreasonable disturbance. I find the evidence of the landlord to demonstrate that there has been ongoing confusion but not to the extent that the resulting behaviour causes interference or disturbance so severe that it leads to a basis for the tenancy to end.

Similarly, I find the landlord's concerns about the tenant leaving the rental property and failing to lock the exterior doors to not be a source of significant risk to the property or the health or safety of other occupants. While the landlord submits that leaving the doors unlocked may result in uninvited guests entering the premises, I find that there is little evidence that this is a significant risk anymore than the ordinary risk of intruders.

I find that both individually and cumulatively the landlord has failed to show that there are grounds for ending this tenancy. Therefore, the tenant's application is allowed.

The tenant did not provide testimony or documentary evidence in support of the portion of their application seeking a monetary award. The tenant describes the basis for their claim in their application as lost wages for the tenant's agents and any legal fees incurred. Not only has the tenant provided no evidence of any monetary losses, I find that the description of the loss is simply the cost of pursuing an application and not something arising from a breach of the Act, regulations or tenancy agreement that

would give rise to a monetary award. Consequently, I dismiss this portion of the tenant's application without leave to reapply.

As the tenant was not wholly successful in their application I decline to issue an order allowing for the recovery of their filing fee.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. This tenancy continues until ended in accordance with the *Act*.

The balance of the tenant's application is dismissed without 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: January 22, 2021

Residential Tenancy Branch