



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, MNDCT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 23, 2020 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated October 19, 2020 (the “October Notice”);
- To suspend or set conditions on the landlord's right to enter the rental unit;
- For compensation for monetary loss or other money owed; and
- For an order that the landlord comply with the Act, regulation and/or the tenancy agreement.

The Tenant filed an amendment adding a dispute of a One Month Notice to End Tenancy for Cause dated December 10, 2020 (the “December Notice”).

This matter came before me for a hearing January 11, 2021. The matter did not conclude and had to be adjourned to January 14, 2021 to complete. An Interim Decision was issued January 11, 2021. This decision should be read with the Interim Decision.

The Tenant appeared at the hearing with S.M. to assist. The Landlord appeared at the hearing with C.T. as a witness. The Landlord chose to have C.T. present throughout the hearing to assist. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I told the Tenant I would hear the dispute of the October Notice and December Notice (the “Notices”) but not the remaining issues which are not sufficiently related. The remaining issues are dismissed

with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties and witness. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notices be cancelled?
2. If the Notices are not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

The tenancy agreement in this matter has been addressed in a prior decision which stated:

The Landlord and Tenants both testified that the tenancy began on October 1, 2019 on a month to month basis. Rent in the amount of \$900.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$450.00.

The Landlord chose to address the December Notice first.

The grounds for the December Notice are as follows:

1. Tenant or a person permitted on the property by the tenant has...
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - c. Put the landlord's property at significant risk.

2. Tenant has not done required repairs of damage to the unit...property...

The Details of Cause state:

- Has not complied with Landlord's notice served on Nov. 10, 2020 to remove evidence of a home based business from the rental property. This invalidates the Landlord's insurance policy leaving the property in extreme peril. This is also against the rules of the Islands Trust on home based business.
- The Tenant lost the keys to the apartment and wanted me to replace the locks. I did not do so. The Tenant installed a new lock and has not given me keys for it. I removed the lock and after speaking to [a Constable] they assured me that the Tenant would reinstall the lock and give me keys. The Tenant has not done so.
- Has made it difficult to do maintenance and repairs by refusing to give reasonable access to contractors. They are hard to get and you must accept their availability timeframes in order to complete work.
- Has blocked access to the common backyard and decks on approximately Aug. 5, 2020 hindering my and emergency access to the backyard and electrical room.
- Has accused my property manager and myself of harassment when just trying to serve legal documents.
- Has ordered me and my property manager to get off my own property with threats to call the RCMP.
- Has accused my property manager of inappropriate sexual comments (retaliation for his helping me).
- Has caused a great deal of distress and fear for myself and other tenants and has caused me significant anxiety requiring medical attention.
- Being belligerent and aggressive at attempts to communicate with the Tenant, leaving us with fear of retaliation.
- The Tenant has made it impossible to enjoy the gardens on the property for fear of confrontation.
- Has removed smoke alarms and track lighting from the apartment and refused to re-install them.

The Tenant did not take issue with the form or content of the December Notice when asked.

There was no issue that the Tenant received the December Notice on December 10, 2020 posted to the door of the rental unit.

I obtained testimony from the parties on all of the above grounds; however, I only find it necessary to detail the testimony on the following ground.

Has removed smoke alarms and track lighting from the apartment and refused to re-install them.

The Landlord testified as follows. The rental unit had smoke alarms when it was rented to the Tenant. The smoke alarms were removed or broken. The Landlord purchased new alarms and gave them to the Tenant who agreed to install them. The Tenant needs to install the alarms because the Tenant will not allow C.T. into the rental unit. The Tenant has not installed the alarms.

C.T. testified that the Tenant should not have taken apart the smoke alarms in the rental unit because the Tenant does not know about electrical issues. C.T. also testified that the building code requires interconnected smoke alarms in the rental unit building.

The Tenant testified as follows. The Tenant has not removed smoke alarms. There are no smoke alarms up in the rental unit. Smoke alarms were never installed. There were no smoke alarms in the rental unit when the Tenant rented it.

The Tenant then changed the above testimony and testified as follows. The Tenant thinks there were smoke alarms in the rental unit. The Tenant is not sure where they were attached. The smoke alarms would go off when the Tenant's previous roommate lived there. The smoke alarms in the upper suite and lower suite were connected so both would go off if one went off which was a problem. The smoke alarms should not have been connected. The Tenant's prior roommate probably took the batteries out of the smoke alarms. The Tenant has a smoke alarm in the kitchen so feels safe. The smoke alarm is not attached to the ceiling.

The October Notice indicated that the Landlord was seeking to end the tenancy due to the smoke alarm issue as it states under the Details of Cause, "Has removed track lighting and removed smoke alarms." The Tenant acknowledged receiving the October Notice.

Analysis

The December Notice was issued pursuant to section 47 of the *Act* and the following subsections:

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk...

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3)...within a reasonable time...

The Tenant had 10 days to dispute the December Notice pursuant to section 47(4) of the *Act*. There is no issue that the Tenant received the December Notice on December 10, 2020. The amendment was filed December 18, 2020, within time.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the December Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Policy Guideline 01 addresses the responsibility of landlords and tenants and states at page four:

SMOKE DETECTORS

1. If there are smoke detectors, or if they are required by law, the landlord must install and keep smoke alarms in good working condition. Regular maintenance includes:
 - annual inspection of the system
 - annual cleaning and testing of the alarm
 - replacing batteries at least annually and according to the manufacturer's instructions.
2. The tenant must not prevent the smoke alarm from working by taking out batteries and leaving them out, or by replacing them with batteries that are dead or the wrong size. For his or her own safety and the safety of others, the tenant must tell the landlord when a smoke alarm needs new batteries, or that it seems to need to be repaired or replaced.

Given the testimony of the parties, I am satisfied there were smoke alarms in the rental unit at the start of the tenancy and that there are not currently smoke alarms in the rental unit, other than one which is not attached to the ceiling. I find this based on the testimony of the Landlord and the testimony of the Tenant who acknowledged there are no smoke alarms in the rental unit currently, other than one which is not attached to the ceiling, and whose testimony clearly shows there were smoke alarms in the rental unit previously. I am satisfied the Tenant or Tenant's previous roommate removed the smoke alarms.

The Tenant or Tenant's previous roommate were not entitled to remove the smoke alarms. The Tenant should have re-installed the smoke alarms or hired someone to do so before this became an issue and certainly should have done this when it became clear in the October Notice that the Landlord was seeking to end the tenancy on this basis. I am satisfied the Tenant was provided a sufficient opportunity to remedy the absence of smoke alarms. I am satisfied the Tenant had not remedied this by the January 14, 2021 hearing given the Tenant acknowledged there are no smoke alarms in the rental unit currently, other than one which is not attached to the ceiling. I find it was the Tenant's responsibility to re-install the smoke alarms or hire someone to do so and not the Landlord's responsibility to do this given it was the Tenant or Tenant's previous roommate who removed the smoke alarms.

I am satisfied that the Tenant or Tenant's previous roommate removing the smoke alarms, and the Tenant failing to re-install the smoke alarms or hire someone to do so does seriously jeopardize the health or safety or lawful right of another occupant or the Landlord and put the Landlord's property at significant risk. Smoke alarms are installed for a reason and assist in preventing damage or injury to people in the rental unit building and to the rental unit building itself. The smoke alarms should not have been removed. Removing the smoke alarms put others in the rental unit building and the rental unit building itself at risk. Whether the Tenant has a smoke alarm sitting in the rental unit unattached to the original location and unattached to the ceiling is irrelevant. A smoke alarm unattached to the ceiling is not sufficient as smoke alarms are attached to the ceiling for a reason.

I am satisfied the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and put the Landlord's property at significant risk by failing to re-install the smoke alarms as required. I find this is grounds to end this tenancy.

I have reviewed the December Notice and find it complies with section 52 of the *Act* as required by section 47(3) of the *Act*. I also note that the Tenant did not take issue with the form or content of the December Notice.

Given the above, I dismiss the dispute of the December Notice without leave to re-apply and uphold the December Notice.

Section 55(1) of the *Act* requires an arbitrator to issue the landlord an Order of Possession when a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

I have dismissed the dispute of the December Notice and upheld the December Notice. I have found that the December Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession. Pursuant to section 55(3) of the *Act*, the Order of Possession will be effective at 1:00 p.m. on February 28, 2021.

Given I have upheld the December Notice on the ground noted, it is not necessary to consider the remaining grounds. Nor is it necessary to decide the validity of the October Notice.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on February 28, 2021. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

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: January 20, 2021

Residential Tenancy Branch