



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, RP, LRE, PSF, LAT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for cause;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- 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;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- for an order permitting the tenant to change the locks to the rental unit.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, I advised the parties that the Rules of Procedure require that multiple applications contained in a single application must be related, and I found that the primary application is for an order cancelling a One Month Notice to End Tenancy For Cause. I advised the parties that the balance of the tenant's application is dismissed with leave to reapply.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord 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 reasons for issuing it?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on May 1, 2004 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is \$375.00 per month, payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$346.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 45 units in an apartment complex. A written tenancy agreement was signed by the parties, but a copy has not been provided for this hearing.

The landlord's agent further testified that on October 26, 2020 the landlord's agent served the tenant with a 3-page One Month Notice to End Tenancy For Cause (the Notice) by posting it to the door of the rental unit. The tenant has provided a copy of the first 2 pages for this hearing, which is dated October 26, 2020 and contains an effective date of vacancy of November 30, 2020. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site/property/park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

With respect to the first reason for issuing the Notice, the landlord's agent testified that the tenant has threatened the landlord's agent that she "better watch out," "better be careful," and to stop stealing.

With respect to the next reason for issuing the Notice, the landlord's agent testified that there is no illegal activity, but the tenant has changed the locks to the rental unit, refuses to give the landlord a key or change the locks back, which has caused several issues, such as annual safety inspection for fire alarms and pest control. The landlord's agent has been asking for a year and a half for the tenant to change the locks back. The last time was on September 23, 2020 and a copy of the letter has been provided for this hearing. Mice are out of control and the tenant won't allow the pest control personnel deal with it and the mice are causing a health hazard throughout the building, going into adjoining units. The landlord cannot get rid of the mice if they can't treat the tenant's rental unit.

With respect to the third reason for issuing the Notice, the landlord's agent testified that the rental unit is in a shambles. Mice have also eaten through flooring and walls, and the rental unit probably needs gutting and numerous repairs.

The landlord's agent has asked the tenant to clean the rental unit, and photographs have been provided for this hearing by the tenant and by the landlord, which the landlord's agent referred to. The landlord's agent described it as a hoarding situation.

The breach of a material term of the tenancy agreement is the tenant's refusal to remove the lock or provide a key.

The landlord's agent further testified that she has tried for quite some time to work with the tenant, however the infestation has gone through the building and the landlord has to make sure that everyone is safe. It is a health hazard at this point.

The tenant testified that she changed the locks to the rental unit because since the beginning of the tenancy strange things were happening in the apartment and the tenant got scared. In 2014 the locks were removed by the landlord's manager while the tenant was in hospital, and when the tenant returned, 80% of her items had been stolen. The tenant also noticed that her pain killers and relaxation pills had been stolen, and began counting her pills.

At least once per month the tenant advised the landlord verbally and in writing about a mouse infestation. All of the tenant's written material was removed from the apartment in 2009, or 2010 or 2011. The landlord told the tenant that there weren't enough mice for it to be a problem. The tenant called Fraser Health who agreed that a pest control company should be called, and the landlord got angry telling the tenant to talk to them first, but the

tenant did so every month, and was even crying. The mice were waking the tenant up and eating her things.

In late 2010 or early 2011 a pest control company arrived and put around bait that he said was enough for 2000 mice and came back every 2 weeks for about 2 months. All the bait was eaten. He also checked the apartments on both sides who had no mice. He indicated that someone let mice into the apartment in a container. That pest control person quit his job, and the manager told the tenant that they had to wait for someone else, which took about a month. The second pest control person put a bait box in the living room, but none behind the stove and the tenant is not sure where the others were placed.

The tenant denies that she has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and testified that her health is compromised.

The tenant has also provided a note from a doctor dated March 13, 2020 indicating that due to severe rheumatoid arthritis the tenant needs help to clean her place.

The tenant changed the lock in 2014 because of thefts; the landlord's agents or employees stole the tenant's papers because they wanted to know what the tenant has on them, and to whom the tenant was writing. The tenant testified that she was writing to Human Rights lawyers.

SUBMISSIONS OF LL:

Due to COVID-19, the tenant was asked to stay on the balcony when a pest control person was there. A minimum of 24 hours' notice was given on each occasion, and within the last 6 months the landlord's agents have provided 4 notices where the tenant refused entry. The landlord's agent has never taken anything from the tenant's apartment, and no one is stealing. The landlord's agent has tried to work with the tenant and only has the best interest of the tenants, including this tenant.

SUBMISSIONS OF TNT:

The tenant has always opened the door, but stealing pills and other items, the tenant has had enough of the pest control company; he wasn't doing any pest control. The tenant has a skin condition from mice and has been on antibiotics for years because of mice and doctors told the tenant to get out of there.

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 tenant does not deny that she changed the locks to the rental unit, which is not permitted by law. The tenant accuses the landlord's agents and employees of theft, but there is absolutely no evidence of that.

There is absolutely no question that the tenant's rental unit has been infested seriously by mice.

Considering the evidence and testimony, I accept that changing the locks is a breach of a material term of the tenancy agreement, meaning that it is a term that is so important to one party or the other that the party would not have entered into a tenancy agreement without that term. Further, the *Residential Tenancy Act* specifies that a tenant may not change locks unless the landlord consents to the change in writing or the tenant has been successful on application in obtaining an order to do so.

The landlord has advised the tenant in writing that the locks must be returned to the original or the landlord must be provided with a key. The tenant has not made an application for an order permitting the tenant to change the lock to the rental unit, and no such order exists.

Therefore, I find that the landlord had cause to issue the One Month Notice to End Tenancy For Cause, and I dismiss the tenant's application to cancel it.

The Residential Tenancy Act also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form.

In this case, the landlord's agent testified that all 3 pages of the Notice was served to the tenant, but has not provided a copy. The tenant has provided the first 2 pages only of the Notice, and therefore, I cannot be satisfied that the Notice was given in the approved form, and I decline to grant an Order of Possession. The landlord is at liberty to make that application.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for cause is hereby dismissed without leave to reapply.

The balance of the tenant's application is 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: January 27, 2021

Residential Tenancy Branch