



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ra-An Enterprises Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, CNC, OLC, RP, RR, OT

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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord was represented by their legal counsel, DK, in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

Both parties confirmed that the tenant was served with a 1 Month Notice dated November 28, 2020. The tenant submits that she was served several versions of the same 1 Month Notice on different dates, which was confirmed by the landlord to be the same 1 Month Notice. As the tenant confirmed receipt of the 1 Month Notice dated

November 28, 2020, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in 2006. Rent is currently set at \$464.30 per month, and the tenant continues to reside at the rental address.

The landlord served the tenant with a 1 Month Notice dated November 28, 2020 on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The 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 landlords;
3. The tenant or a person permitted on the property by the tenants has put the landlord's property at significant risk;
4. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord provided further details of why they issued the 1 Month Notice, as noted in the affidavit of SB. SB stated that she co-manages the building for and on behalf of the landlord, which is a business owned by her mother AB. A copy of the 1 Month Notice, and affidavit is included in the landlord's evidentiary materials. SB was also called as a witness during the hearing to testify to the issues arising from this tenancy, and why the landlord feels an Order of Possession is justified. The landlord included the above grounds, and listed additional reasons in her affidavit which were not selected on the 1 Month Notice:

1. The tenant has not done required repairs of damage to the unit/site/property/park;
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

SB testified in the hearing about why the landlord had issued the 1 Month Notice dated November 28, 2020. SB testified that the tenant continues to smoke and fail to maintain an acceptable standard of cleanliness in her rental unit. SB testified that the tenant has also interfered with the landlord's attempts to perform repairs and maintain the rental unit and building. SB testified that the tenant also continues to harass and threaten the landlord.

The landlord provided several photographs of the rental unit in their evidentiary materials which were taken in July and August 2020. The landlord submits that these photographs clearly show the unsanitary and dangerous state of the rental unit. SB testified that the tenant's living conditions pose a health and safety hazard, particularly if a fire were to happen. SB also testified to a rotten smell that made it difficult to breathe. SB testified that the tenant has shown an unwillingness or inability to maintain and keep the rental unit in an acceptable state of repair. The landlord is concerned about the level of damage caused by the tenant to the rental unit that exceeds wear and tear, and the impact on the landlord's ability to fulfill their obligations to repair the building, and maintain a standard of health and safety.

SB testified that the tenant was successful in obtaining an order in a previous hearing that the landlord provide the tenant with a key to the front door. SB testified that the landlord had obtained a report following a site inspection that states that entry through the front door decreases the overall security of the building. A copy of the report was included in the landlord's evidentiary materials. The landlord is concerned that the tenant had provided access to unknown parties, which was a breach of security. The landlord also included correspondence from their insurance provider that states that the tenant's possession of the key to the front door poses a significant security risk.

SB testified that due to the condition of the rental unit and harassment by the tenant, contractors have refused to complete repairs as they were concerned about the health hazard and working conditions. SB testified that the tenant has, and continues to, interfere with the landlord's ability to perform repairs, and dispatch contractors. SB testified that in response to her 24 hour notice that the landlord required access on January 30, 2021 at 9:00 a.m. to check the rental unit for new and existing issues, the tenant responded in writing that she would not permit the landlord entry into the rental unit "for the following reasons: the landlord has submitted a sworn affidavit concerning matters that involve issues that will be addressed at the February 2021 RTB Hearing...to allow the landlord to enter the rental units would be prejudicial towards the tenant, NS. The landlord is welcome to enter the unit depending on the decision concerning file...not until then".

The tenant disputes all the claims made by the landlord, and the testimony and affidavit of SB. The tenant referenced the long history of dispute resolution proceedings between the parties, which include five dispute resolution hearings and corresponding decisions issued in the last twelve months. The tenant testified that the landlord has repeatedly issued the tenant Notices to End Tenancy, which were meritless and all cancelled. The tenant submits that the landlord has been warned about the implications of the issuance of these notices, and that the tenant has been granted monetary awards for the landlord's breaches. The tenant testified that the landlord has neglected longstanding repairs, and have attempted to blame the tenant for damaging the rental unit and revisit the same issues such as the issue of the tenant's right to the key. The tenant notes that the landlord had attempted to recover the cost of repairs as agreed upon during a previous hearing, which was dismissed by the Arbitrator.

The tenant testified that the landlord had taken photos without previous knowledge or permission of the tenant for the intended purpose, and that the photos were taken of the rental unit during the process of repairs when the tenant had moved her belongings in her rental unit to accommodate the repairs. The tenant submitted photos in evidence which the tenant testified was in deep contrast to the conditions presented by the landlord, which the tenant testified was not representative of the true state of the rental unit. The tenant denies ever interfering with a contractor, and testified that she had only requested that the landlord reschedule the inspection until after the hearing as the tenant was concerned about the landlord's true motive in wanting to enter the tenant's rental unit. The tenant noted that the tenant was the party who had requested repairs,

and is still seeking an order for the landlord to perform outstanding repairs, and for compensation, specifically a \$100.00 rent reduction for the landlord's failure to complete outstanding repairs, including repairs to the bathroom floor and bathroom exhaust fan.

The tenant is also seeking an order that the landlord comply with the previous orders made, including the orders pertaining to the key to the front door. The tenant testified that the landlord continues to disregard the previous orders made by Arbitrators.

The tenant also requested that the landlord return her personal belongings that were removed during the period of August 10 through to August 14, 2020 when she had temporarily vacated the rental unit in order for the landlord to complete repairs. The tenant testified that these missing items include a security latch, curtains, two comic books, and a glass bowl.

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. As the tenant filed this application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered and reviewed the testimony before me, as well as the evidence submitted for this application. I have also reviewed the previous decisions and orders made related to this tenancy. I find that although the landlord provided very detailed evidence in support of why they had issued the 1 Month Notice dated November 28, 2020, the tenant provided contrasting testimony that challenges the arguments and issues brought up in the landlord's submissions.

Although the landlord provided photographs of the rental unit, which the landlord states supports the unsanitary and unclean state of the rental unit, the tenant testified that the pictures were taken of the temporary state of the rental unit when the tenant was required to move her belongings in order to accommodate the repairs. The tenant provided her own photographs that depict a very orderly and clean rental unit, which the tenant states is a more accurate portrayal of the present condition of the rental unit. In reviewing the evidence, I note that the photos submitted in the landlord's evidence were taken in July and August of 2020, over six months ago. In light of the conflicting evidence and testimony, and as the evidentiary burden of proof is on the landlord to

support the 1 Month Notice, I find that the landlord has failed to demonstrate that the tenant maintains an unhealthy and unsanitary state in her rental unit.

Similarly, despite the landlord's concerns of damage to the rental unit, the tenant provided contrasting evidence that the landlord has failed to perform repairs as required, and that the "damage" referenced in the landlord's evidence is in fact outstanding issues that the landlord has failed to address. In consideration of the evidence before me, I am not satisfied that the landlord had provided sufficient evidence to support that the tenant has caused extraordinary damage to the rental unit.

I have noted the landlord's concerns that the tenant has refused entry or access to her rental unit despite being given 24 hour's notice.

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Residential Tenancy Policy Guideline #7 provides further clarification on the definition of “reasonable purpose” which includes:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

The policy guideline also sets out the procedure in the circumstances where a party does not agree with the landlord’s notice of entry.

The tenant may not prevent a landlord from entering to carry out repairs, where a valid notice of entry has been given, even if the tenant is capable, and willing to carry out the repairs.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. An arbitrator may find that the holding of an "Open House" by the landlord's realtor is not a reasonable purpose if the landlord cannot ensure the safety of the tenant's possessions.

I find that the tenant had refused the landlord entry despite the landlord’s notice to do so. I find that the tenant refused the landlord entry based on the tenant’s determination that the landlord did not have a reasonable purpose for the entry, and that this determination is based on the tenant’s past experience with the landlord. Although repairs are required to the rental unit, I find that the tenant had prevented access providing a reasonable explanation for doing so, as allowed under the Act. Accordingly, I do not find that this action can be considered a contravention of the Act, and especially not to the extent that justifies the end of this tenancy on the grounds provided on the 1 Month Notice.

The landlord also referenced the safety risk posed by the tenant’s actions. I find that the landlord had raised significant concern about the right of the tenant to possess the key to the front door, although the tenant is in possession of an Order from an Arbitrator to provide her a working key for the front door. Despite the landlord’s concerns, the landlord has not obtained an Order that has altered or cancelled the tenant’s right to this key. In fact, I find that the tenant was successful in a subsequent application in obtaining a rent reduction pertaining to the landlord’s continued denial of the tenant’s

right to the possession of a working key. For this reason, I do not find that the landlord has sufficiently supported that the tenancy should end on these grounds.

The landlord also testified to the harassment and interference from the tenant that has prevented the landlord and contractors from fulfilling their obligations and duties. The tenant disputes these claims, and submitted evidence to support that the landlord has continued to harass the tenant through various means, including the issuance of repeated notices to end tenancy. The tenant also submitted in evidence video footage of the interactions between the tenant and agents, including an instance where the tenant's camera was knocked down. In light of the evidence before me, I find that a history of conflict exists between the parties, and based on the evidence before me I am not satisfied that the tenant is solely responsible for this conflict, nor am I satisfied that the tenant is the party that had initiated or is solely responsible for the ongoing dispute between the parties.

For the reasons outlined above, I find that the landlord has not satisfied me that they have cause for ending this tenancy on the grounds provided on the 1 Month Notice dated November 28, 2020. Accordingly, I allow the tenant's application to cancel the 1 Month Notice dated November 28, 2020, and this tenancy is to continue until ended in accordance with the *Act*.

In consideration of the other portions of the tenant's application, I find that the previous orders granted were clearly set out in the previous decisions. I order that the landlord comply with these orders unless the landlord is in possession of an order by an arbitrator cancelling or amending these orders.

As noted above, I find that the tenant had denied the landlord access to enter or rental unit as the tenant did not feel the purpose to be reasonable. I order that both parties comply with section 29 of the *Act*, especially for the purpose of the fulfillment of previous orders or agreements made after a dispute resolution proceeding. If either party is unable to do so, the parties must follow the procedure as set out in the corresponding policy guideline. I accept the testimony of the landlord that they were unable to complete repairs due to their inability to access the rental unit. For this reason, I dismiss the tenant's application for repairs with leave to reapply.

I have considered the tenant's application for a rent reduction, and I am not satisfied that the tenant has provided sufficient evidence to support that the landlord has failed to fulfill their obligations as required by section 32 of the *Act* as stated above. I find that some of the delay with completing repairs can be attributed to the actions of both

parties. On this basis, I dismiss the tenant's application for a further rent reduction without leave to reapply.

Lastly, I order that the landlord return the tenant's personal belongings to her, which include a security latch, curtains, two comic books, and a glass bowl. If the landlord is unable to do so, or is no longer in possession of the tenant's property, I order that the landlord compensate the tenant with the replacement value of the missing items. The tenant is responsible for providing the landlord with detailed evidence to support the value of the items that were removed by the landlord.

I allow the tenant to recover the filing fee. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated November 28, 2020 is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I order that the landlord comply with the previous orders made unless the landlord is in possession of an order by an arbitrator cancelling or amending these orders. I dismiss the tenant's application for repairs with leave to reapply.

I dismiss the tenant's application for a rent reduction without leave to reapply.

I order that the landlord return the tenant's personal belongings to her, which include a security latch, curtains, two comic books, and a glass bowl. If the landlord is unable to do so, or is no longer in possession of the tenant's property, I order that the landlord compensate the tenant with the replacement value of the missing items. The tenant is responsible for providing the landlord with detailed evidence to support the value of the items that were removed by the landlord.

I allow the tenant's application to recover the filing fee. I allow the tenant to implement this monetary award of \$100.00 by reducing a future monthly rent payment by that amount.

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: February 23, 2021