



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC
 OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- An order for the Landlord to comply with the Act, regulation or tenancy agreement.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

This hearing also dealt with a Cross-Application for Dispute Resolution (the Cross-Application) that was filed by the Landlord under the Act, seeking:

- An Order of Possession based on the One Month Notice; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's support person, the Landlord and two agents for the Landlord (the Agents), all of whom provided affirmed testimony. As the parties confirmed receipt of each other's Notice of Dispute Resolution Proceeding packages by registered mail, and neither party raised concerns with regards to service or timelines, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in their respective Applications.

Preliminary Matters

Preliminary Matter #1

Although the parties acknowledged receipt of the majority of each other's documentary evidence within the required timelines set out in the Rules of Procedure, the Tenant acknowledged that two letters submitted by them to the Residential Tenancy Branch (the Branch) on February 1, 2021, were not served on the Landlord.

The Rules of Procedure state that all documentary evidence to be relied on at the hearing must be received by the other party in advance of the hearing. Further to this, the ability to know the case against you is fundamental to the dispute resolution process. As a result, I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to accept the evidence before me from the Tenant for consideration in this hearing that has not yet been served on the Landlord. As a result, I have excluded this documentary evidence from consideration. The Tenant was however permitted to read this documentary evidence at the hearing or to paraphrase the submissions and arguments covered in the letters during the hearing if they wished to do.

Although copies of numerous text messages were also submitted to the Branch by the Tenant on February 1, 2021, as these text messages were duplicate copies of evidence already submitted and served on the Landlord in accordance with the Act and the Rules of Procedure, I have accepted them for consideration.

Preliminary Matter #2

In their Application the Tenant sought remedy under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice and the Landlord applied for an Order of Possession based on the One Month Notice, I find that the priority claims relate to validity of the One Month Notice and whether the tenancy will continue or end. As I find that the Tenant's claim for the Landlord to comply with the Act, regulations, and tenancy agreement is not sufficiently related to the One Month Notice or continuation of the tenancy, I exercise my discretion to dismiss this portion of the Tenant's claim with leave to reapply.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a One Month Notice, the Landlord's Cross-Application seeking an Order of Possession based on the One Month Notice, and the Landlord's claim for recovery of the filing fee.

Preliminary Matter #3

Although the parties engaged in brief settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the One Month Notice is upheld or the Tenant's Application seeking its cancellation is dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The month to month (periodic) tenancy agreement in the documentary evidence before me states that the tenancy commenced on April 1, 2020, that rent in the amount of \$700.00 is due on the first day of each month, and that a \$350.00 security deposit was required. A two page addendum to the tenancy agreement was also submitted and both the tenancy agreement and addendum were signed on April 1, 2020.

At the hearing the parties confirmed that the terms of the tenancy agreement are as set out in the tenancy agreement and addendum before me and that the \$350.00 security deposit was paid, the entirety of which is still held in trust by the Landlord. The parties also agreed that full rent has been paid for use and occupancy of the rental unit for February 2021.

The Landlord and Agent J.G. stated that the One Month Notice and attached two page letter in the documentary evidence before me were personally served on the Tenant on October 31, 2020, and at the hearing the Tenant confirmed personal receipt on that date.

The One Month Notice in the documentary evidence before me is in writing on the approved Branch form, contains the address for the rental unit, is signed and dated October 31, 2020, has an effective vacancy date of November 30, 2020, and states that the notice has been served because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. In the details of cause section, it states "Please see attached document for "Details of the Events".

The attached two page letter authored by the Agent J.G. states that prior to the start of the Tenant's tenancy, the Landlord had no problems with the six occupants of the property and that the Tenant was made aware prior to entering into the tenancy agreement that there was smoking on the premises and in other occupants rental units, which the Tenant took no issue with. The Agent stated that shortly after moving into the rental unit, the Tenant took issue with the other occupants of the property smoking both on the property and in their own respective rental units. The Agent stated in the letter that a meeting was held between the Landlord and all of the occupants of the property where the Tenant's grievances were heard, and an agreement was ultimately reached that the area outside of the laundry room entrance would be a smoke-free-zone for a three hour window every Sunday so that the Tenant could have smoke-free access to the Laundry room.

In the letter the Agent goes on to say that although the smoking issue was resolved at the above noted meeting, the Tenant continued to instigate ongoing verbal disputes with the other occupants of the property, resulting in calls to the police, that the Tenant has uttered condescending, offensive and derogatory remarks towards the Landlord and the other occupants of the property, likening them to a "lynch mob" and the "klu klux klan", and that by the Tenants own admission, they are not a good fit for the building. The Agent finished the letter by stating that as the Tenant's actions continue to adversely

affect the quiet enjoyment of the other occupants, the Landlord is seeking an end to the tenancy.

The Landlord supplied written complaint letters from the five other occupants of the property wherein they allege that the Tenant has disturbed their peace and quiet, yelled at them or the Landlord, made derogatory remarks towards them, other occupants, or their guests, and that in general the Tenant is a nuisance and not very nice to them. They also stated that there has been an increase in police attendance at the building since the Tenant moved in and one occupant alleged that the Tenant either hit them or attempted to hit them.

The Tenant denied that the smoking issue was ever resolved or that they have engaged in the negative behaviour alleged by the Landlord, the Agent J.G., and the other occupants, especially attempting to hit or hitting another occupant. The Tenant raised concerns about the legitimacy of the complaints made against them by the other occupants of the property on the basis that the letters are not sworn or affirmed, the authors of the complaints did not appear at the hearing to provide sworn or affirmed testimony subject to cross-examination, and their personal opinion that the other occupants are simply being untruthful in an effort to have them evicted. Although the Tenant acknowledged that the police have been called several times, they stated that the police have been called by them as a result of disputes with the other occupants of the property that the Landlord is refusing to deal with, and stated that it is their right to call the police when necessary. While the Tenant denied being rude or condescending, they stated that they are well educated and intelligent, that they pay their rent on time, and that they lead a different lifestyle than many of the other occupants of the property, which is not a bad thing or a basis for their eviction.

The Tenant submitted several audio recordings of interactions between themselves and other occupants, copies of text messages, and several written complaint letters from them to the Landlord in support of their position.

The Agent J.G. acknowledged that there has been “bad mouthing” on both sides between the Tenant and the other occupants and that the Tenant’s concerns with regards to smoking have led to “bad blood” between all the parties. One of the occupants also acknowledged in their written complaint that they took a letter to them from the Tenant, wrote “stop being a Karen” on it, and taped it to the Tenant’s window. A copy of this letter was provided for my review.

Overall the parties fundamentally disagreed about whether the Tenant had engaged in any behaviour that would constitute grounds for ending the tenancy pursuant to section 47 of the Act. The Tenant also denied any knowledge of the matters alleged in the complaint letters prior to receipt of the Landlord's documentary evidence, which was received by them after service of the One Month Notice. As a result, the Tenant argued that they were never warned by the Landlord that they were engaging in any sort of inappropriate behaviour, that this behaviour could result in the end of their tenancy, or provided with any opportunity to correct their behaviour. Further to this, the Tenant argued that the other occupants of the property are exhibiting the same behavior described by the Landlord and the other occupants as inappropriate, unreasonable, and disturbing, towards them, without any action or reprisal from the Landlord. As a result, the Tenant argued that the One Month Notice should be cancelled.

Although the Landlord stated that the Tenant had been warned about their behaviour numerous times, they provided no documentary evidence to corroborate this testimony and during the hearing they could provide me with no details about how and when the Tenant was warned or what behaviour had been addressed in the warnings, except to reference one meeting between themselves and all of the occupants of the property regarding smoking.

The Landlord sought to uphold the One Month Notice and requested an Order of Possession for February 28, 2021, as the Tenant has paid rent for use and occupancy of the rental unit for February. The Landlord also sought authorization to withhold \$100.00 from the Tenant's security deposit for recovery of the filing fee.

Analysis

Based on the documentary evidence and testimony before me, I am satisfied that a tenancy to which the Act applies exists, and that the Tenant was served with the One Month Notice and two page attachment in the documentary evidence before me on October 31, 2020.

Section 47(1)(d)(i) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

It was clear from the documentary evidence before me and the testimony of the parties at the hearing that there is an acrimonious relationship between the Tenant and both

the Landlord and the other occupants of the property. By the Agent J.G.'s own admission there is "bad blood" between them and both parties have engaged in bad mouthing one another in what the Agent J.G. referred to as an "oil and water situation". Although the Landlord submitted letters of complaint about the Tenant from the five other occupants of the property, at the hearing the Tenant denied the behaviour alleged in them or any knowledge of the matters alleged prior to receipt of the Landlord's documentary evidence, which was after service of the One Month Notice. As a result, the Tenant argued that they were never warned by the Landlord that they were engaging in any sort of inappropriate behaviour or that this behaviour could result in the end of their tenancy, or provided an opportunity to correct it. Further to this, the Tenant argued that the allegations against them are untrue, and that other occupants of the property are exhibiting the same behavior towards them that they are allegedly exhibiting towards the other occupants, without any action or reprisal from the Landlord. As a result, the Tenant argued that the issuance of the One Month Notice on the basis of the alleged behaviour, most of which they deny and most of which they argue is also being exhibited towards them by other occupants of the property, was unreasonable and therefore the One Month Notice should be cancelled.

Although the Landlord stated that the Tenant had been warned about their behaviour numerous times, they provided no documentary evidence to corroborate this testimony and during the hearing they could provide me with no details about how and when the Tenant was warned or what behaviour had been addressed in the warnings, except to reference one meeting between themselves and all of the occupants of the property regarding smoking.

Based on the above, I am not satisfied on a balance of probabilities, that prior to the service of the complaint letters, which was after service of the One Month Notice on the Tenant, that the Tenant was ever properly advised by the Landlord or their agents of the complaints against them or warned that this behavior could result in a termination of their tenancy. I am also satisfied based on the documentary evidence before me from both parties and the testimony of the parties at the hearing, that some if not all of the same behaviour the Landlord has taken issue with on the part of the Tenant, is also being exhibited towards the Tenant by the other occupants of the property in varying degrees, and that the Landlord has not taken issue with this behaviour on the part of the other occupants. Based on the above, I am not satisfied that the Landlord has cause to end the tenancy by way of the One Month Notice and I therefore dismiss the Landlord's Application seeking an Order of Possession, without leave to reapply. The Tenant's Application seeking cancellation of the One Month Notice is therefore successful and I order that the One Month Notice is cancelled and of no force or effect.

Despite the above, the Tenant is now considered to have been forewarned by way of the One Month Notice, the complaint letters before me, and the testimony of the Agent J.G. and the Landlord at the hearing, that the Landlord takes issue with the behaviour noted in the One Month Notice, the complaint letters, and the hearing, and that if this or other behaviour occurs on the part of the Tenant after the date of this decision which significantly interferes with or unreasonably disturbs the other occupants of the property or the Landlord, regardless of the acrimonious relationship between the Tenant and the other occupants and/or the Landlord, the Landlord may have cause under section 47 of the Act to serve another One Month Notice and end the tenancy.

As the Landlord's Application was dismissed, I decline to grant them recovery of the \$100.00 filing fee.

Conclusion

The Landlord's Application is dismissed in its entirety without leave to reapply.

As the Tenant was successful in their Application seeking cancellation of the One Month Notice, I therefore order that the One Month Notice is cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the Act.

The Tenant's Application seeking an order for the Landlord to comply with the Act, regulations and tenancy agreement was 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 Act.

Dated: February 5, 2021

Residential Tenancy Branch