



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, LRE, FFT**

Introduction

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

- Cancellation of a 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- An order restricting the landlord's right to enter the rental unit pursuant to section 70; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Should conditions be set on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the 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.

The parties agree on the following facts. This tenancy began on August 1, 2020. The current monthly rent is \$1,300.00 payable on the first of each month. A security deposit of \$600.00 was paid at the start of the tenancy which is still held by the landlord. There was a previous hearing under the first page of this decision on December 7, 2020 dealing with the landlord's application for an early end of tenancy and Order of Possession.

The landlord issued a 1 Month Notice dated November 9, 2020 providing the following reasons for the tenancy to end:

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.*

Tenant has caused extraordinary damage to the unit/site or 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.

The landlord gave lengthy rambling testimony regarding the reasons they wish this tenancy to end. The landlord submits that the sump pump in the rental unit has clogged on several occasions causing the pump to require replacement and leaking sewage in the basement of the building. The landlord testified that the sump pump has been replaced during the tenancy and believes that the tenant has attempted to dispose of unacceptable materials down the toilet.

The landlord characterizes their relationship with the tenant as difficult with the tenant having called the police to intervene on occasion. The parties described ongoing conflicts between them. The landlord characterizes the tenant's behaviour and reactions to be disproportional with emotional outbursts, crying, and accusations against the landlord. The landlord believes that the tenant's swearing, rude behaviour and lack

of respect for the landlord gives rise to a basis for the tenancy to end. The landlord says that they have become aware of the tenant's mental health diagnoses sometime during the tenancy. Despite making several disparaging and demeaning remarks during the hearing regarding the tenant's mental health the landlord disputes that they have ever been insulting or condescending. The landlord believes their behaviour to be reasonable and acceptable and that they have accommodated the tenant's requests.

In addition to the issue of the sump pump and the tenant's behaviour, the landlord also submits that the tenant smoke marijuana on and about their property and that this causes unreasonable disturbance to the landlord, their family and neighbors as well as poses a health risk. The landlord believes this to be a material term of the tenancy that has been breached but confirmed that they have not issued any written warning to the tenant identifying the issue as a breach. The landlord claims that they have received complaints about marijuana use from third parties but did not provide into evidence any written complaint from third parties. The landlord submitted into evidence copies of correspondence between the parties, written submissions and some photographs.

The tenant disputes that there is a basis for the issuance of the 1 Month Notice. The tenant characterizes the landlord's ongoing conduct and interactions with the tenant as harassment and an infringement against their right to quiet enjoyment of the rental unit.

The tenant also submits that the landlord makes frequent visits to the rental unit without written notice and that these are intrusive and confrontational with the landlord insults, disparaging remarks and condescension by the landlord. The parties agree that the landlord has begun providing written notice prior to entering in accordance with the *Act* and is now making monthly inspections in accordance with section 29(2) of the *Act*. The tenant submits that there is no need for such frequent inspections, that the purpose of the visits are more in the nature of harassment than inspecting the condition of the premises and seeks an order to restrict the landlord's right to enter the rental unit.

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 must demonstrate that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed the landlord or another occupant, seriously jeopardized the health, safety or lawful right of the landlord or another occupant, put the property at significant risk or have caused extraordinary damage to the property, or that the tenant has breached a material term of the tenancy agreement that was not corrected after written notice.

Taken in its entirety I find the landlord has failed to meet their evidentiary burden to demonstrate that there is cause for this tenancy to end. I found the landlord to be an unreliable witness who provided self-aggrandizing testimony not supported in the documentary materials and contradicted by their own statements and demeanor in the hearing. The landlord claimed that they have acted in a professional and respectable manner toward the tenant despite making several disparaging, insulting and ignorant comments during the hearing regarding the tenant's mental health. The landlord's own documentary materials show correspondence between the parties where the landlord belittles the tenant, disbelieves they have any health condition and makes unreasonable demands of the tenant. Throughout the hearing the landlord made several allegations that contradict their own earlier testimony or documentary materials, are not supported in evidence and have little air of reality to them. I find the landlord to be an unreliable witness whose testimony and submissions are of little assistance in determining facts.

I accept the submission of the parties that the sump pump for the rental property malfunctioned and required replacement. I do not find sufficient evidence that the malfunction is wholly attributable to the tenant or that the nature of the damage is so great that it could reasonably be characterized as extraordinary damage or a significant risk to the property. I find that a few instances of clogging to be an inconvenient and unpleasant malfunction to repair but easily rectified and with no significant risk to the property. The landlord's own evidence shows that the issue was quickly repaired with the replacement of the pump with no evidence of further damage. I find the instances of a malfunctioning sump pump to be an inconvenience that does not rise to the level of being extraordinary damage or a significant risk to the property such that it gives rise to a basis for the tenancy to end.

Similarly, I do not find the tenant's use of marijuana or attitude in their interactions with the landlord to be an interference, disturbance or risk to the health and safety of others. Based on the evidence of the parties I accept that the tenant uses marijuana but I find little evidence to support the landlord's interpretation that this use is in a manner or

frequency that is unreasonable to the extent that it could reasonably be considered an interference or disturbance. I find insufficient evidence in support of the landlord's position that the tenant's conduct is so egregious that it gives rise to an end of the tenancy.

Based on the testimonies and documentary materials of the parties it is evident that despite the deteriorating relationship between the parties the tenant has acted in a reasonable manner. I find the correspondence demonstrates some exasperation and frustration but no more than to be expected under the circumstances. I note that the tenant did not engage with the landlord during the hearing or in their written correspondence despite the landlord making several demeaning and ignorant comments regarding their mental health.

The landlord has testified that they have not given any written notice to the tenant of a breach of a material term. As the landlord has failed to inform the other party in writing that there is a problem believed to be a breach of a material term as set out in Residential Tenancy Policy Guideline 8, I find that the landlord has failed to demonstrate that there has been a material term that has been breached giving rise to an end of the tenancy.

I find that both individually and cumulatively the landlord has failed to meet their evidentiary burden to demonstrate on a balance of probabilities that there is any basis for the tenancy to end. Consequently, I allow the tenant's application and cancel the 1 Month Notice of November 9, 2020. This tenancy continues until ended in accordance with the Act.

I find insufficient evidence in support of the other portions of the tenant's application. While I accept that the landlord's demeanor, frequency and tone of their correspondence and interactions have been a source of stress and discomfort for the tenant, I find insufficient evidence that there has been a breach of the Act, regulations or tenancy agreement or a basis for the landlord's statutory right to access the rental unit to be suspended.

I find it appropriate to remind the parties of section 29 of the Act which provides the circumstances and manner in which a landlord may enter a rental unit during a tenancy agreement.

Based on the evidence of the parties I find that the landlord's conduct and behaviour has not breached the Act, regulations or tenancy agreement nor is there a basis to

suspend or set conditions on their right to enter the rental unit. I find that the interactions to date have primarily been for reasonable purposes such as arranging for repairs and serving materials for a dispute resolution hearing. I do note that continued interactions without a reasonable purpose or further use of inflammatory or derogatory language by the landlord may give rise to a basis for a monetary award on the tenant's part for a breach of quiet enjoyment and reasonable privacy.

At this time I find there is insufficient evidence in support of this portion of the tenant's application and dismiss it with leave to reapply.

As the tenant was successful in their application they may recover their filing fee from the landlord. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

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

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

The balance of the tenant's application is 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: February 11, 2021

Residential Tenancy Branch