



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **DRI, LRE, LAT, OLC, CNC**

Introduction

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

- An order to dispute a rent increase pursuant to section 41;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- Authorization to change the locks to the rental unit pursuant to section 31.
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62; and
- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

The tenant and both named landlords attended the hearing. As all parties were present, service of documents was confirmed. The landlords acknowledged service of the tenant's Application for Dispute Resolution and stated they had no issues with timely service of documents. The landlords did not provide any documentary evidence in advance of this hearing.

Preliminary Issue

The tenant named her children as applicants in this Application for Dispute Resolution. As her children are not parties to the tenancy agreement, their names have been removed from this decision in accordance with section 64(3) of the Act.

Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. I determined the tenant's application to cancel the landlord's one month notice to end tenancy for cause was the issue of primary importance and would be heard during this hearing. The tenant's other issues were not sufficiently related and I exercise my discretion to dismiss them with leave to reapply.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The landlord gave the following testimony. The one year, fixed term tenancy began on October 1, 2019 with an end date of October 1, 2020. Rent was set at \$1,250.00 per month, payable on the first day of the month. No copy of the tenancy agreement was provided as evidence. A security deposit of \$625.00 was collected from the tenant which the landlord continues to hold. No formal condition inspection report was signed by the parties at the commencement of the tenancy.

On November 30, 2020, the landlord served the tenant with a One Month Notice to End Tenancy for Cause ("Notice"). A copy of the Notice was provided as evidence. The Notice is dated and signed by the landlord and provides an effective date of January 1, 2021.

Under "details of cause" on page 3, the landlord notes:

Details enclosed on separate copies – under details of cause.

When I asked the landlord how many pages were included in the "details of cause", the landlord first responded that he never gave the tenant the reasoning. Next, the landlord stated all the details were given to the tenant. When asked again how many pages were in the detail of cause, the landlord responded, *"One or two maybe even three pages"*. At this point, the co-landlord responded that there were 2 pages, but she had to open the document on her computer to be sure. The landlord confirmed that he had a paper copy of the Notice in front of him, but not a paper copy of the "details of cause". He only printed a copy to give to the tenant, not one to keep for himself.

On the second page of the Notice, landlord's reasons for ending the tenancy are listed in italicized print, the landlord's testimony regarding the reasons follow:

- 1. 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 landlord;*

The tenant set up a home office in the staircase landing at the top of the suite. Ran electrical cables, put in computer cables. This poses a danger to anyone accessing the stairway in the case of an emergency.

2. *the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;*

the tenant stored garbage outside. A neighbour killed a rat in the tenant's garbage. She cooks late in the night, causing asthma for the landlord's wife. Bad cooking smells come from the tenant's cooking. On August 24th, the tenant used strong chemicals to clean.

3. *the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;*

The tenant has run wires without the landlord's authorization.

4. *the 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;*

The tenant set up a home office and her boyfriend comes over during the pandemic.

5. *the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*

The tenant allows her children to run around. Once, the tenant's children was found wandering outside the rental unit and could have been hurt.

6. *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/sit or property/park;*

The tenant has put holes in the walls. A transition strip was torn up, a shower door is now hanging by a thread. Holes were put in the doors and a tv mount was put up without the landlord's consent, potentially damaging wires in the walls.

7. *tenant has not done required repairs of damage to the unit/site/property/park.*

The tenant repainted the unit without his consent. Repairs were done to the transition strip, not a proper repair. Doesn't match the original flooring. Shower door still has no handle. All cables still on the walls, home office is still at the top of the stairs.

The landlord provided other miscellaneous testimony not specifically related to reasons to end the tenancy. He stated the tenant moved her boyfriend in after 2 months, he parks his truck in front of the house in front of the driveway. She's running her exhaust fans, driving up the electricity bills. The tenant's children slide garbage under the connecting door between the upper and lower units. She cooks at odd hours, filling the house with bad smells.

The tenant gave the following testimony. She was not provided with a condition inspection report from the landlord when she moved in. She's never been given any written request to do any repairs by the landlord.

The tenancy agreement says utilities were included in the rent and the landlords got an electric vehicle which made the hydro go up. The landlords are trying to evict the tenant because they want her to pay 40% of the hydro which is not the original agreement. While the landlord claims the kitchen and bathroom fans are causing higher electricity bills, it's not possible since the fans are broken.

Regarding bad smells, there was a single incident where the tenant left popcorn in the microwave too long, burning it. The tenant opened the windows to air it out, but the smell apparently aggravated the landlords. Regarding bad smelling cleaners, the tenant was unaware the landlord's wife had asthma. The tenant denies she did anything to bring about a notice to end tenancy based on cleaning products.

Lastly, the tenant testified that when the landlord served her with the notice to end tenancy, she was not provided with the 2-page document earlier referred to by the landlord under "details of cause" for ending the tenancy. The tenant testified that she repeatedly asked the landlord to provide her with the reasons, but they refused to provide it to her. She still does not have the document.

Analysis

Based on the evidence before me, I am satisfied the tenant was served with the One Month Notice to End Tenancy for Cause on November 30, 2020. The tenant filed an Application for Dispute Resolution to dispute the Notice within 10 days, as required by section 47 of the Act.

If the tenant files the application, 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 when the landlord gave Notice to the tenants, the tenancy should be ended for the reasons identified in the 1 Month Notice. Further, I must be satisfied that the tenant understood the reasons for ending the tenancy were fully disclosed to her. Stated directly in the Notice is the following notation:

"describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided."

The tenant testified repeatedly that she was not provided with the “details of cause” as to why the landlord is ending the tenancy. In her evidence package, the tenant provided all 3 pages of the Notice she said was served on her. There is no additional 2-page document with a detailed description of the alleged breaches of the Act or tenancy agreement for the tenant to argue against during the hearing.

In contrast, the landlord testified that a 2-page description of the alleged offences was given to the tenant. During the hearing, the landlord was unable to recall whether the “details of cause” consisted of one, two or three pages. He testified that he only had a copy of the 3-page notice to end tenancy in front of him, no hard copy of the 2-page attachment was printed or kept by him. The co-landlord pulled up the electronic document on her computer during the hearing to provide me with oral details of the document.

As stated previously, rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the onus of proof to satisfy me the facts occurred as claimed lies with the landlord when a tenant disputes a notice to end tenancy. In this case, the landlord has not provided a copy of the “details of cause” for me to examine for this hearing, and the tenant denies receiving the document. Without any documentary evidence to corroborate their version of events, I find the landlord has not proven the “details of cause” were served upon the tenant. I find the tenant was not provided with sufficient particulars of the reasons for cause being made against her and as such, the tenant was unable to know what evidence she would need to defend herself or rebut the landlord’s claim.

For these reasons, I find the landlord’s One Month Notice to End Tenancy for Cause is of no further force or effect and I dismiss it.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect.

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 22, 2021