



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL RES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The landlord's agent, KF('the landlord'), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. The tenant attended with her partner SE as well as DL, who was assisting the tenant. Both parties 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 that the landlord was duly served with the tenant's application. The landlord testified that she was not served with the tenant's evidentiary materials for this hearing. The tenant's evidence was summarized and read in the hearing by myself, and the landlord confirmed that they did not take issue with the admittance of this evidence. Accordingly, the tenant's evidence was admitted for the purpose of this hearing. The landlord did not submit any written evidence for this hearing.

The landlord testified that the 1 Month Notice to End Tenancy for Cause, with an effective date of December 31, 2020 ('the 1 Month Notice') was served to the tenant by way of registered mail on November 25, 2020. The tenant indicated during the hearing that there was no issue with the service of the 1 Month Notice. Accordingly, I find that

the 1 Month Notice was deemed served to the tenant in accordance with sections 88 and 90 of the *Act* on November 30, 2020, 5 days after mailing.

Preliminary Issue—Tenant’s Application for an Extension of Time to File her Application for Dispute Resolution

The tenant filed their application for dispute on December 17, 2020, although the 1 Month Notice was deemed to have been received on November 30, 2020. The tenant has the right to dispute the Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenant stated that she has battled both addiction and mental health issues for many years, including anxiety, and requires the assistance of other parties to assist her. The tenant submitted a note from her doctor dated December 21, 2020 confirming this. The tenant submits that the parties who normally assist her were unavailable to assist her at the time that she was served with the 1 Month Notice.

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as “*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure*”.

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenant has provided a compelling reason for the late filing of their application. Under these circumstances, I am allowing the tenant’s application for more time to make their application.

Preliminary Issue: Adjournment of Hearing

The tenant requested an adjournment of the hearing. The applicant stated that there are other matters outstanding that involve the same parties and dispute address, and they have not had the opportunity to fully prepare the evidence for the hearing. The applicant also stated that they wanted an adjournment in order to verify the outcome of the matter

concerning the tenant's partner. The landlord was opposed to the adjournment as they were ready to proceed, and the matter has been outstanding for some time.

The criteria provided for granting an adjournment, under Rule 6.4 of the Residential Tenancy Branch Rules of Procedure are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

Although the tenant expressed concern that an adjournment was necessary in order to allow them more time to prepare for the hearing. I have noted the tenant's submissions in consideration of the criteria set out in Rule 6.4.

Although I am sympathetic to the tenant that they felt they needed more time to prepare fully for the hearing, I find that the tenant did have time to submit written evidence, which the landlord was not opposed to admitting for this hearing. Furthermore I find that it would be prejudicial to the landlord as the matter pertains to a notice to end tenancy, and the landlord was ready to proceed with the application that was filed in December of 2020 for a Notice to End Tenancy that was served at the end of November 2020. Not only do I think an adjournment is not necessary or would contribute to a resolution of this matter, I find that an adjournment would be extremely prejudicial to the landlord as the effective date of the 1 Month Notice has passed over 2 months ago. Accordingly, an adjournment was not granted. The hearing proceeded.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

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 on December 15, 2015 when the tenant resided in a different unit. The tenant moved to this rental unit on August 1, 2016, with monthly rent currently set at \$888.75, payable on the first of each month. The landlord currently holds a security deposit of \$390.00 for this tenancy. The tenant continues to reside in the rental unit.

The landlord issued the notice to end tenancy providing three grounds:

1. The tenant has allowed an unreasonable number of occupants in a rental unit; and
2. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. 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 landlord's agent testified that the tenant has allowed an unauthorized occupant to reside with her, SE, who is the tenant's partner. Both parties confirmed that SE is not named in the tenancy agreement as a tenant. The landlord testified that the 1 Month Notice was served on the tenant after an incident that took place involving an employee of the landlord who resides in another unit in the building. The landlord testified that the tenant's partner, SE, physically assaulted this party who was preparing the building for painting. The landlord provided a police file number for the incident, but was unable to confirm whether any charges have been laid in relation to the incident.

The tenant testified that the landlord's agent has been working for the landlord since December 1, 2018, and that the tenant has had issues ever since. The tenant testified that her partner SE has been residing in her rental unit with her for 6 years with the landlord's knowledge, and the landlord had never taken issue with this.

The tenant testified that the incident involving the landlord's contractor took place following an ongoing issue with FC knocking on the tenant's door and making requests without proper written notice. The tenant disputes that SE had assaulted the party, and testified that SE was assaulted by FC. The tenant testified that SE has not been charged by the police in relation to this incident.

The tenant called a witness, KM. KM confirmed that she is the wife of the former property manager, and assisted with the duties of the PM. KM testified that the landlord was aware that SE resided there, and that this was by consent of the landlord. KM testified that the tenant and SE were pleasant and never presented any problems.

The landlord's agent, in cross-examination, confirmed that KM was not a paid employee of the landlord, and that her husband's employment with the company was terminated. The landlord's agent testified that KM was not licensed to act in the capacity or role of agent for the landlord.

Analysis

Section 46 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 noted above, I had allowed the tenant's late filing of her application. As the tenant has filed their application disputing the 1 Month Notice, and having issued a notice to end this tenancy, the landlord has the burden of proving the landlord has cause to end the tenancy on the grounds provided on the 1 Month Notice.

It was undisputed by both parties that SE resides in the rental unit with tenant, and that the tenant is the only named tenant on the tenancy agreement. The tenant testified that SE has been living with her for 6 years with the landlord's knowledge. The tenant called a witness who confirmed that SE has been living there for a several years, and with the landlord's knowledge. Although I accept the landlord's testimony that SE is not named in the tenancy agreement, I find that the tenant and SE have been candid about the fact that SE has been residing there.

Regardless of whether SE is named in the tenancy agreement, I must determine whether "the tenant has allowed an unreasonable number of occupants in a rental unit". In consideration of the evidence and testimony before me, I am not satisfied that the landlord had met the burden of proof to support that there is an unreasonable number of occupants in the rental unit. I accept the testimony of SE, the tenant, and tenant's witness, that SE has been residing there for several years, and I find that landlord has failed to support how why the number of occupants is now considered unreasonable despite the fact that the number of occupants has not changed for several years.

The other reasons provided on the 1 Month Notice for ending this tenancy is that the tenant has:

1. permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

I find it undisputed that an incident did take place that involved both SE and FC. In consideration of the evidence before me, however, I find that there is conflicting testimony as to who had started the altercation. As noted above, the burden of proof

falls on the landlord to support that this tenancy should end on the grounds provided on the 1 Month Notice. In this case, I find that the evidence falls short that SE had acted in a manner that would justify the end of this tenancy. I am not convinced that this incident was unprovoked, nor has the landlord provided corroborating evidence or testimony to support that SE had assaulted FC.

For the reasons cited above, I find that the landlord has not met their burden of proof in establishing that they have cause to end this tenancy under section 47 of the *Act*, and accordingly I am allowing the tenant's application for cancellation of the 1 Month Notice dated November 25, 2020. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated November 25, 2020. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act* and tenancy agreement.

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: March 11, 2021

Residential Tenancy Branch