



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Introduction

On January 8, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act) to cancel a One-Month Notice to end tenancy for cause (the One-Month Notice”), issued January 1, 2021. The matter was set for a conference call.

On January 20, 2021, the Tenant submitted a request to amend their Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act) to include a request to cancel 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice), issued January 17, 2021.

The Landlord, the Landlord’s spouse (the “Landlord”), the Tenant and the Tenant’s advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me, and both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the One-Month Notice issued on January 1, 2021, be cancelled?
- Should the 10- Day Notice issued on January 17, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on November 15, 2014, as a month-to-month tenancy. That the Tenant pays rent in the amount of \$600.00 by the first day of each month, and that the Tenant had paid the Landlord a \$300.00 security deposit at the outset of the tenancy. The Tenant submitted a copy of the tenancy agreement and attached addendum into documentary evidence.

The parties agreed that the Landlord served the One-Month Notice to end tenancy to the Tenant on January 1, 2021, by posting it to the front door of the rental unit. The Tenant submitted a copy of the One-Month Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- Tenant is repeatedly late paying rent.
- 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 or person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:*
 - *Damage the landlord's property*
 - *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*

- *Tenant or person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.*
- *Tenant has not done required repairs of damage to the unit/site/property/park*
- *Breach of a material term of the tenancy agreement that was not corrected within reasonable time after written notice to do so.*

The Notice states that the Tenant must move out of the rental unit by February 1, 2021. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that in September 2020, they noticed that the Tenant had three additional people living with them in the rental unit. The Landlord testified that they spoke to the Tenant regarding these extra people at that time and that the Tenant assured them they were just friends visiting them to help them with home care due to an illness but that they were not living with them.

The Landlord testified that they took the Tenant at their word, but when they noticed several weeks later that these three people were at the rental unit all day and every day, they approached the Tenant again, asking to be introduced to the new people to vet them to be included on the tenancy. The Landlord testified that the Tenant agreed to this and was to arrange a time for everyone to meet but that the Tenant never arranged the requested meeting. The Landlord testified that they waited several weeks, hoping that the Tenant would bring these people to meet them agreed but that by the end of December, they decided to issue this notice to end the tenancy.

The Tenant testified that they had not moved anyone else into the rental unit but does agree that there was someone staying with them in a homecare capacity due to an illness. The Tenant testified that no other person never moved into the rental unit, that the firm they had provided home care had their own residence but agreed they would spend every day with them providing care while they recovered. The Tenant testified that they are the only ones residing in the rental unit.

The Landlord testified that the Tenant has a long history of paying rent late; when asked to testify to the number and time of late payment of rent over the last twelve months, the Landlord testified that the Tenant had paid their rent late once in the last twelve months.

The Landlord testified that the Tenant had a party at the rental unit on December 30, 2020, and that when the Landlord attended the rental unit to ask the Tenant to shut down the party, the Tenant refused to come to the door. The Landlord testified that the guests of the Tenant were very rude to them, yelling at them to go away and that they closed the door to the rental unit on the Landlord's hand, breaking one of their fingers.

When asked, the landlord testified that they did not call the police that evening but that they did call them the next morning, requesting that a welfare check on the Tenant. The Landlord submitted a copy of the police report into documentary evidence.

The Tenant testified that they did not have a party on the evening of December 30, 2020. The Tenant testified that they did not come to the door when the Landlord asked for them as they had taken medication that evening, and they were asleep in their room during the Landlord's visit. The Tenant testified that they disagreed with the Landlord account of events for that evening and that their caregiver had acted within their rights to refuse access to the rental unit when the Landlord demand to enter.

The Landlord testified that they did not have any specific illegal acts to testify to or submit documentary evidence about during these proceedings. The Landlord testified that they are withdrawing this point on their notice, that the "Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: Damage the landlord's property and Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord."

When the Landlord was asked to provide testimony regarding the claimed extraordinary damage to the unit/site or property/park, the Landlord was unable to provide specific details as to what was damaged in the rental unit on the rental property. The Landlord testified that they are withdrawing this point on their notice.

The Landlord testified that on November 16, 2020, they served the Tenant with a written request to clean up the rental unit and surrounding property. The Landlord testified that the Tenant is hoarding and that due to the amount of stuff the Tenant is storing on the property, they believe that there is damage or had the potential for damage to the property. The Landlord testified that as of the date of these proceedings, the Tenant has still not completed the requested cleaning and junk removal. The Landlord submitted a copy of the letter and 17 pictures into documentary evidence.

The Tenant testified that they have received the Landlord's written request to clean up the rental unit and property but that due to their illness, they require assistance in

completing the cleanup. The Tenant testified that they have made arrangements for a local social assistance group to assist them with the clean up of the property but that this clean up has been delayed due to the COVID-19 pandemic. The Tenant testified that they have remained in contact with this group and hope to have their assistance very soon in completed the requested clean-up of the property.

The parties agreed that the Landlord served the 10-Day Notice to the Tenant on January 17, 2021, in person. The Notice has an effective date of January 27, 2021, and an outstanding utility bill in the amount of \$150.00. Both parties submitted a copy of the 10-Day Notice into documentary evidence.

The Landlord testified that the attached addendum for the tenancy agreement required that the Tenant pay for above normal electricity (hydro) usage. The Landlord testified that they presented the Tenant with a demand to pay their over usage in December 2020, but that the Tenant had still not paid the requested amount by mid-January 2021, so they issued the 10-Day Notice to end tenancy.

The Tenant wrote in their written submission that there are three residents on the rental property, all running off the same hydro bill and that they do not feel it is fair that they are required to pay half of whatever the Landlord has deemed as over usage in a billing period.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Tenant is seeking to cancel two notices to end their tenancy; I will address each one individually.

First the One-Month Notice, I find that the Tenant was deemed to have received the One-Month Notice on January 4, 2021, three days after it was posted to the front door of the rental unit, pursuant to the deeming provisions stipulated in section 90 of the *Act*.

Section 47 of the *Act* states the following regarding a Landlord's notice to end tenancy for cause:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenant had until January 14, 2021, to file their application to dispute this Notice. I have reviewed the Tenant's application for dispute resolution, and I find that the Tenant filed their application on January 8, 2021, within the legislated timeline.

The Landlord indicated seven reasons on the Notice as the cause for ending the Tenant's tenancy; I will address each reason individually:

1. Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.

During the hearing, I heard contradictory testimony from both parties regarding the number of people residing on the rental unit.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, as the Landlord has issued this Notice to end tenancy, therefore, the Landlord holds the burden of proving the claims in this Notice.

After a careful review of the testimony and the documentary evidence before me, I find that the Landlord has not provided any documentary evidence to support their claim that anyone besides the Tenant is residing in the rental unit. As there is no evidence before me that would outweigh the contradictory verbal testimony of the parties, I must dismiss the Landlord's notice on this point.

2. Tenant is repeatedly late paying rent.

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent gives further guidance stating:

Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent

The Residential Tenancy *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

In this case, I accept the sworn testimony of the Landlord that the Tenant has paid their rent late one time in the last twelve months. I find that this is an insufficient number of late rent payments to justify the Notice issued by the Landlord. Therefore, I must dismiss the Landlord's notice on this point.

3. Tenant or a person permitted on the property by the tenant has:

- a. Significantly interfered with or unreasonably disturbed another occupant or the landlord
- b. Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord
- c. Put the landlord's property at significant risk

During the hearing, I heard contradictory testimony from both parties regarding the events of December 30, 2020.

Again as stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As the Landlord issued this Notice, they hold the burden of proving this claim.

After careful review of the testimony and the documentary evidence before me on this point of the Landlord's notice, and I find that the Landlord has not provided sufficient documentary evidence to support their version of the events for on this date. I have reviewed the police report submitted into evidence by the Landlord; however, this report contains no police account of the events of December 30, 2020. As there is insufficient evidence before me that would outweigh the contradictory verbal testimony of the parties regarding this event, I must dismiss the Landlord's notice on this point.

4. Tenant or person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:
 - a. Damage the landlord's property
 - b. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord

During the hearing, the Landlord testified that they had no evidence or testimony of illegal activity on rental property and withdrew this point of this notice. I accept the Landlord's request to withdraw this point of the One-Month Notice to end tenancy.

5. *Tenant or person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.*

During the hearing, the Landlord testified that they had no evidence or testimony of specific damage to the rental unit or property and withdrew this point of this notice. I accept the Landlord's request to withdraw this point of the One-Month Notice to end tenancy.

6. Tenant has not done required repairs of damage to the unit/site/property/park
7. Breach of a material term of the tenancy agreement that was not corrected within reasonable time after written notice to do so.

After reviewing the Landlord's testimony and written submissions, I find that points six and seven of the Landlord's notice to end tenancy are related to the same matter. I find it appropriate to address these two points together in my written decision.

I accept the Landlord's testimony, support by their documentary evidence, that they requested the Tenant clean up the rental unit and surrounding outdoor areas of the rental property. I also accept the agreed-upon testimony of these parties that the requested cleaning has not been completed as of the date of these proceedings.

However, I noted that the Landlord neglected into included a date of required completion on their written request to clean up the rental unit and property.

Additionally, I accept the testimony of the Tenant that they have made arranged for a local social assistance group to assist them with the clean-up of the property but that this clean-up has been delayed due to the COVID-19 pandemic.

As the Landlord had not included a required clean update in their written demand that the Tenant clean up the rental unit and property, I find that it is reasonable for the Landlord to wait until the arranged help arrives to complete the clean up of the rental unit and property, and I dismiss the Landlord's notice on this point.

Overall, I find that the Landlord has not provided sufficient evidence to show that this tenancy should end for any of the reasons they indicated on their One-Month Notice to end tenancy for cause. Therefore, I dismiss this notice in its entirety.

The tenant is cautioned that the Landlord's written request to clean up the rental unit and property is valid and that they must ensure that the requested cleaning is completed as soon a possible.

As for the 10-Day Notice to ended tenancy, the Landlord testified that they issued this notice to the Tenant due to the Tenant's refusal to pay the demand letter they had issued for the payment of an electricity bill. The Landlord references their tenancy agreement with the attached addendum to support their claim for ending the tenancy for non-payment of the utilities for this tenancy.

I have carefully reviewed the tenancy agreement and attached addendum entered into by these parties, and I find that the tenancy agreement clearly states that electrically is included in this tenancy. However, I note that the attached addendum states the following:

“Hydro is included in the rent pleased be power smart. If more hydro then normal being used we require the tenant pay the extra.”

[Reproduced as written]

Additionally, I noted that the attached addendum is not dated, signed, or initialled by either party to this dispute. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligation under it.

Enforcing rights and obligations of landlords and tenants

6 (1) *The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*

(2) *A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58*

(1) *[determining disputes].*

(3) *A term of a tenancy agreement is not enforceable if*

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

As it was the Landlord who drew up the tenancy agreement, I find that the Landlord bore the obligation to ensure that the terms therein were certain and the obligation of the parties was well-defined. After a careful review of the tenancy agreement and attached addendum, I find that it would be unreasonable to expect that the Tenant ought to have known what extra usage vs normal usage of hydro would have been for this tenancy or what they may be responsible for paying in addition to their rent. I find that pursuant to the rule of contra proferentem, the ambiguity in this term must be resolved against the Landlord who drafted the tenancy agreement. Therefore, I find that the Tenant is not responsible for any portion of the hydro bills for this tenancy in addition to their rent.

As it has been determined that the Tenant is not responsible for paying hydro for this tenancy, I find that the 10-Day Notice issued for non-payment of a hydro bill to not be enforceable under the tenancy agreement or the *Act*, and I grant the Tenant's request to cancel the 10-Notice to end their tenancy.

Conclusion

I grant the Tenant's Application to cancel the One-Month Notice, issued January 1, 2021.

I grant the Tenant's Application to cancel the 10-Day Notice, issued January 17, 2021.

This tenancy will continue until it is ended in accordance with the Act.

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: April 12, 2021

Residential Tenancy Branch