



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 19, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a One Month Notice to End Tenancy for Cause dated April 7, 2021 ("the One Month Notice");
- an order to restrict or suspend the Landlord's right to enter;
- an order granting the recovery of the filing fee.

The Tenant, the Tenant's Interpreter J.T., the Tenant's Counsel J.T., the Landlord, the Landlord's Advocate L.Z., and the Landlord's Realtor M.W. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised during the hearing, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to an order restricting the Landlord's right to enter the rental unit, pursuant to Section 70 of the *Act*?
3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
4. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on March 9, 2019. Currently, the Tenant pays rent in the amount of \$4,380.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$2,190.00, which the Landlord continues to hold.

The Landlord stated that they served the Tenant with the One Month Notice on April 7, 2021 with an effective vacancy date of May 31, 2021 by posting it on the door of the dispute address. The Tenant confirmed having received the One Month Notice, however, could not recall which date. The Landlord's reasons for ending the tenancy on the One Month Notice are;

"The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

"The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord."

The Landlord stated that they notified the Tenant of their intent to list the rental property for sale on March 29, 2021. As such, the Landlord posted a notice of entry on the door of the rental unit on April 1, 2021 for the purpose of the Realtor to take measurement and photos of the rental property for the listing on April 5, 2021. The Landlord served a second notice to entry on the door of the rental unit on April 2, 2021 for entry of the rental unit on April 7, 2021 to show the rental unit to a perspective buyer.

The Landlord stated that they issued a warning letter to the Tenant on April 5, 2021 cautioning the Tenant that her restricting the Landlord's entry to the rental unit is a breach of a material term of the tenancy. The Landlord stated that on both occasions, the Tenant refused entry to the Landlord and their Agents. As such, the Landlord issued the One Month Notice to the Tenant on April 7, 2021.

The Tenant responded by stating that she was concerned about her health at the time, given the escalating cases of infection relating to the Covid-19 pandemic. The Tenant stated that she was trying to adhere to the Provincial Regulations by not allowing other who aren't considered in her "bubble" into the rental unit. The Tenant stated that she is a good Tenant and intends to stay in the rental unit long term.

The Landlord stated that prior to the Tenant having knowledge of the house being listed for sale, she was agreeable to having trades persons in the rental unit to repair the furnace. The Landlord is under the impression that the Tenant is merely trying to resist the sale of the rental property.

The parties agreed that the Tenant has since permitted the Landlord to enter the rental unit since the Tenant has received her vaccination. The Landlord remains skeptical relating to the Tenant's willingness to accommodate viewings of the rental unit. The Tenant stated that the Landlord must ensure the Landlord's entry is for a reasonable purpose as not to breach her quiet enjoyment.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice on April 7, 2021 with an effective vacancy date of May 31, 2021 by posting it on the door of the dispute address. The Tenant confirmed having received the notice, however, could not recall which date. In accordance with Section 90 of the Act, I find the One Month Notice is deemed to be served to the Tenant on April 10, 2021, three days after it was posted to the Tenant's door.

I accept that the Landlord has served the Tenant with proper notices of entry and that the Tenant has been resistant to the Landlord and their Agents entering the rental unit to take pictures in order to list the home for sale. I find that the Tenant has some valid concerns regarding their health. I accept that the Tenant refused the Landlord entry to the rental unit on April 5 and 7, 2021. I accept that the Landlord and their Agents have since been able to access the rental unit without incident.

In this case, the Tenant has a right to quiet enjoyment and peaceful occupation of the premises. At the same time, the Landlord has the right to enter under certain conditions. The *Act* addresses the rights and obligations of Landlords and Tenants with respect to entry into a rental unit. While there may have been some initial resistance from the Tenant regarding allowing access to the rental unit, I find that there were some misunderstandings and miscommunications between the parties which contributed to the disagreement around the Tenant allowing the Landlord access to the rental unit.

The Residential Tenancy Branch Policy Guideline 7 offers some useful information which is applicable to both parties in this situation;

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m. Notices must also be served in accordance with the *Act*.

The notice must be served in accordance with the Residential Tenancy Act. If the landlord leaves the notice in the mailbox or mail slot, or attaches it to the door or other conspicuous place on the rental unit, the notice is not deemed to be received until 3 days after posting or placing it in the mailbox or slot. If the notice is sent by mail, the notice is not deemed received until 5 days after mailing. If the notice is sent by fax, the notice is not deemed received until 3 days after faxing it. This additional time must be taken into consideration by the landlord when advising of the date and time of entry.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

In this case, the Landlord is seeking to end the tenancy based on the fact that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

According to the Policy Guideline #8; a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing that there is a problem;

that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and, that if the problem is not fixed by the deadline, the party will end the tenancy.

While the Landlord communicated to the Tenant on April 5, 2021 that denying the Landlord access to the rental unit was a breach of a material term of the tenancy agreement, I find that the Landlord did not indicate that the breach needs to be fixed by a reasonable deadline or else the tenancy would end. For these reasons, I find that the Landlord did not provide adequate notice to the Tenant pursuant to section 45(3) of the *Act*.

The Landlord has also indicated on the Notice to End Tenancy that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant refusing entry to the Landlord on April 5 and 7, 2021 constitutes a significant interference or unreasonable disturbance to the extent that the tenancy needs to end.

In light of the above, I cancel the One Month Notice, dated April 7, 2021. I order the tenancy to continue until ended in accordance with the *Act*.

The parties are encouraged to abide by the terms set out in Policy Guideline 7 described above. I caution the tenant that should they unreasonably deny the Landlord or the Realtor access to the rental unit after proper written notice is provided in accordance with the *Act*; the Tenant is now sufficiently warned that this may give the Landlord sufficient cause to end the tenancy.

I find that the Landlord provided proper notice of entry to the Tenant, who did not permit entry. While this breach did not merit ending the tenancy, I find that the Tenant was not at liberty to refuse entry in this circumstance and therefore dismiss the Tenant's claim for an order restricting the Landlord's right to enter the rental unit. I find that the Tenant is not entitled to the return of the filing fee.

Conclusion

The One Month Notice issued by the Landlord dated April 7, 2021 is cancelled. The tenancy will continue until 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: August 27, 2021

Residential Tenancy Branch