Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, RR, OLC, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on May 13, 2021. They seek an order to cancel the One Month Notice to End Tenancy for Cause (the "One-Month Notice"). Additionally, they seek a reduction in rent for repairs not undertaken, an order for repairs, the landlord's compliance with legislation and/or tenancy agreement, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on September 21, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions in the hearing. An advocate assisted the tenant in the hearing; both parties attended with witnesses.

At the start of this hearing the tenant stated they served notice of this hearing to the landlord, including their prepared documentary evidence. The landlord confirmed that they received this material. Reciprocally, the tenant confirmed they received the documents prepared by the landlord for this hearing. On this basis, the hearing proceeded.

Preliminary matter

At the outset, I advised both parties of the immediate issue concerning the One-Month Notice. By the *Residential Tenancy Branch Rules of Procedure* Rule 2.3 and 6.2, I do not consider the issues related to the landlord's compliance, nor repairs – they are

unrelated to the tenants' Application to cancel the One-Month Notice. On these issues, the tenant has leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the One Month Notice?

If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Neither party provided a copy of the tenancy agreement. Through testimony, both parties agreed the tenancy started in August 2013. The current amount of rent is $887 including parking. The landlord stated they became the owner of the rental unit in 2017; this explains why they did not have a copy of the extant tenancy agreement. At the start of the landlord-tenant relationship, the landlord provided a copy of Park Rules that they had the tenant sign.

The landlord here issued an initial One-Month Notice on April 30, 2021. In the hearing the landlord acknowledged this document was not signed or dated. They agreed this document was invalid for this reason.

They followed this with a second One-Month Notice on May 10, 2021. This gave the move-out date to the tenant of June 30, 2021. The second page indicated the tenant "significantly interfered with or unreasonably disturbed another occupant or the landlord." In the details section, the landlord listed:

- multiple emails from the tenant complaining about other tenants
- the tenant is "very uncontrolling and unrespectful towards me and other tenants"
- the tenant "made assumptions many times that were not true"
- the tenant threatened "many times" to take the landlord to court
- the tenant sent long emails to the landlord, and called at 7:00am

- the tenant's behaviour caused significant interference with the landlord's life, and the landlord is unable to have peace in the park with this tenant present.

The landlord provided examples of emails from the tenant. One series concerned the landlord communicating with the tenant's father in an attempt to resolve conflicts the tenant has with other park residents. The tenant's responses focus on the apparent inaction of the landlord to deal with other residents, some of which involves racial harassment. The alleged inaction also involves requests for repairs. The landlord also provided a copy of their Inbox showing the series of messages from the tenant from April through to July.

In the hearing, the landlord presented that they always followed up on the tenant's requests or issues with their individual unit, within 24 hours and involving the resident manager. They listed various issues of repair that they had spent money on. The landlord objected to the notion that they treated the tenant different than the others, and is discomforted by words, threats, and disrespect in emails. Also, the tenant here is the person who always raises problems; complaints and other issues do not come from other residents.

The resident manager and two other residents attended the hearing to speak to the behaviour of the tenant. The manager spoke to the manager's prompt responses to the tenant's queries or questions, many of which involved the conflicts with others. The other residents spoke more specifically to certain incidents. They described this on the level of harassment.

In the hearing, the advocate spoke to the validity of the One-Month Notice on the tenant's behalf. The complaints from the tenant were warranted, both for required repairs and those involving "racially motivated harassment" from the other residents. With reference to the landlord's Inbox, approximately half of the messages shown are those involving the harassment. The messages show the tenant's own ongoing frustration; this does not raise to the level of harassment where complaints are warranted.

The advocate pointed to the Park Rules as they appear in the landlord's evidence. In their submission, it appears the landlord is relying on these rules as a material term. If this is the case, the landlord did not advise the tenant previously of a violation of a material term in writing.

Similarly, the landlord never notified the tenant of these actions continuing as disturbances or interfering with either themselves or the landlord. If there was a "trigger point" it was not known to the tenant prior to receiving the One-Month Notice. The landlord did not witness events personally, and stated in the hearing they did not know who was right and who was wrong in the conflict.

As to the main conflict, the tenant's advocate presented that it is the tenant here who is the target of harassment. This is in terms of a physical altercation, having their home sprayed with water. The tenant's complaints on this – laced with frustration – go unheeded by the landlord here. In the tenant's evidence appear references that attest to the good nature of the tenant.

In sum, the tenant submits an end to the tenancy is unwarranted in this situation where the landlord has not met the burden of proof to establish cause. The tenant was never notified by writing. An end to the tenancy is not appropriate here merely because of the tenant's responses to harassment, their queries to the landlord on this and complaints about maintenance.

Analysis

At the outset of the hearing, I advised the parties – particularly the tenant, their witness, and the other residents who attended the hearing – that this hearing was not the place to air their grievances about the other. Nor is this the forum in which I pronounce one of the parties to the conflict as "right" or justified in any of their actions. At the end of the hearing the tenant wanted to refute what the other witness residents presented in the hearing. I did not allow that toward the closing of the hearing after I determined that they wished merely to oppose what the other residents provided, rather than why the One-Month Notice was unwarranted. My consideration is set out below, and I confine my decision only to whether the One-Month Notice was justifiably issued by the landlord.

The *Act* s. 47 provides various grounds for which a landlord may end a tenancy by issuing a One-Month Notice.

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. On my review, they have not provided sufficient evidence to show a limit or boundary to the tenant's conduct was set in place and was known to the tenant. My reasons are as follows:

- There is no copy of the tenancy agreement. It is not known if the tenant has a copy of the tenancy agreement which is the single go-to document governing the landlord-tenant relationship. There is no evidence the tenant ever signed an agreement which is a fundamental starting point in any tenancy. I encourage the landlord to examine the possibility of having a new or updated agreement in place.
- There were no documented warnings that make reference to Park Rules or the tenancy agreement. This is a very powerful tool for a landlord to utilize in making clear to a tenant that there are rules, and infractions can result in an end of the tenancy. There is no evidence in the landlord's messages to the tenant of this, and in simple fairness to the tenant, this was not undertaken.
- There was no record of a pattern of incidents. I appreciate there is a relatively long period in which the residents' conflict has continued; however, in order to establish a pattern of interference or disturbance to others, a recorded history is necessary. Without reference to dates or fulsome descriptions from other residents, it is difficult to establish the reliability of their evidence.

In sum, the landlord did not provide information on their past requests for the tenant to comply with social norms, or other specific terms of the tenancy agreement or the *Act*. There is evidence the tenant was contributing to conflict throughout; however, without sound evidence from the landlord I cannot conclude that the tenant was the sole source of all reasons listed on page 2 of the One-Month Notice.

Without more detail on specific incidents from the landlord, and the landlord imparting knowledge to the tenant, I find the One-Month Notice is not valid. The landlord has not met the burden of proof; I so order the One-Month Notice to be cancelled.

I appreciate the landlord is in a difficult situation. There are resources available to assist with difficult conflicts of this sort. I would suggest a dedicated, allotted time reserved for the tenant in which they can air their concerns, stepping away from email or text messages as a means of communication. With direct conversation, the tenant will feel heard and have some assurance that their concerns or feelings are valid – this is a large part of the continued issues raised by the tenant. Such an arrangement establishing boundaries can be documented and signed by each to show agreement on this plan.

As the tenant was successful in this application, I find the tenant is entitled to recover the $100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of $100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One-Month Notice issued on May 13, 2021 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 23, 2021

Residential Tenancy Branch