



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC (tenant); OPC, FFL (landlord)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The tenant attended with the advocate SM ("the tenant"). Each party acknowledged service and no issues of service were raised. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Each party confirmed the email address to which the Decision and any Order will be sent.

Settlement Discussions During Hearing

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

During the hearing, the parties engaged in discussions regarding resolution of the dispute. The parties were unable to reach a Decision and the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Two Month Notice? Is the landlord entitled to an Order of Possession and reimbursement of the filing fee?

Background and Evidence

The parties did not submit a written tenancy agreement. However, they agreed on the following background of the tenancy:

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	November 15, 2013
Date of ending	ongoing
Length of tenancy	“about 8 years”
Monthly rent payable on 1 st	\$705.00
Security deposit	\$330.00
Pet deposit	\$50.00

The landlord testified that the condition of the tenant’s unit became a problem in January 2020. In the landlord’s application, they stated as follows (as written):

The smell coming from the apartment is very bad. Seventeen bag of garbage were removed. The day before I went in to have look they were thrown over the deck. Inside I found more garbage. The health and safety of other occupants and the building because of bugs and garbage cat dropping and the smell of urine. Fly's by the door of the apartment I have pictures.

The landlord did not issue any written warnings, and none were submitted as evidence. The landlord testified that he verbally warned the tenant many times about the unacceptable condition of the unit.

They landlord stated the building, which contained 15 units, was treated for cockroaches on February 1, 2020. The landlord testified that he was informed by the pest company that the tenant's unit was the likely source of the cockroaches. The landlord testified he could see the unit was "a mess" and "smelled bad" when he accompanied the company's workers the day of the treatment. No evidence from the pest company was submitted and the landlord's claims were not substantiated.

The landlord testified neighbours of the tenant complained about the smell from the unit. No witness statements were submitted.

The landlord testified they issued a Notice of Inspection effective April 17, 2021. That day, the landlord observed many bags of green garbage bags being removed from the unit. Upon entry, he observed green garbage bags throughout the unit some of which seemed to have been opened by the tenant's cat. The landlord observed food scraps in the opened garbage bags. The landlord testified there was a smell of cat urine and rotting meat. The landlord submitted several photographs taken during the visit in support of his testimony.

Accordingly, the landlord issued a notice to end the tenancy as follows:

INFORMATION	DETAILS
Type of Notice	1 Month Notice
Grounds	Tenant or a person permitted on the property by the tenant has: <ul style="list-style-type: none">significantly interfered with or unreasonably disturbed another occupant or the landlord.

	<ul style="list-style-type: none"> seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
Date of Notice	April 27, 2021
Effective Date of Notice	May 31, 2021
Date and Method of Service	Posted
Effective Date of Service	April 30, 2021
Application for Dispute Resolution filed by tenant	May 5, 2021
Date of landlords' Application	May 27, 2021

A copy of the One Month Notice was submitted which is in the standard RTB form. The tenant acknowledged service of the One Month Notice as set out above.

The tenant testified as follows. She acknowledged that her unit was untidy the day the landlord inspected on April 17, 2021.

Regarding the garbage bags, the tenant testified as follows. She discarded multiple bags in advance of the inspection as part of general tidying and decluttering. The garbage bags mostly contained items going to a donation center and they did not contain biodegradable garbage as he said. The tenant submitted a copy of a letter from a person who stated he "was hired to perform a dump run" by the tenant that day and that the load "did not seem unusual for a spring downsize cleaning as the majority of bags appeared to be clothes, toys and recycling materials".

The tenant testified that until recently she has medical issues which prevented her from keeping the unit as clean and orderly as she would have preferred. She stated that because of the pandemic, she was unable to obtain the cleaning and other support she needed.

The tenant testified as follows. Her unit was not the source of the cockroach problem. Her unit does not smell; she has a cat and litter which she cleans. She has a cleaner come in every two weeks.

The tenant submitted photographs which she said were taken three weeks ago and represent the usual condition of the unit. The photographs show a clean and organized unit; pictures of appliances and the bathroom reflect an average cleanliness standard. The tenant disagreed with the landlord's characterization of the state of the unit. The tenant acknowledged it was disorganized in his photographs but stated that she does her best to keep things tidy and was temporarily hampered by her medical issues and lack of support during the pandemic.

The landlord acknowledged that he has not gone into the unit since April 17, 2021. He repeatedly testified that the tenant's efforts at organization follow a cycle: disorganization and dirtiness followed by warnings and the tenant's efforts to clean. The landlord submitted no documentary evidence to support this claim.

The tenant requested that the One Month Notice is cancelled, and the tenancy continued.

The landlord requested that an Order of Possession and an award for reimbursement of the filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Burden of proof

In an application to dismiss a One Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Credibility

It is up to the party making a claim to establish it on a balance of probabilities, that is, that the claim is more likely than not to be true.

Both parties appeared convinced of their version of events. However, the landlord did not submit as evidence any warning letters to the tenant, third party invoices or reports, or witness statements. The landlord submitted some photographs of garbage bags in the unit. The landlord relied primarily on his testimony.

I accept the tenant's explanation as reasonable and believable that she was tidying up after a period of disability and the bags were destined for a donation center and did not contain biodegradables.. I do not find the photographs on their own to amount to supporting evidence of the landlord's claim which was not corroborated.

I find the landlord has failed to submit evidence to support the landlord's claims. As the landlord's testimony was unsupported by documentary evidence, I give greater weight to the tenant's testimony as supported by recent photographs and the letter from the disposal company.

Grounds for Notice

Section 47 states in part as follows:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: ...

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

[...]

Each of the claims are addressed.

Grounds: Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property

Considering the totality of the landlord's evidence, the lack of supporting documents and my findings on credibility, I find that the landlord has not met the burden of proof on a balance of probabilities that the tenant *significantly* interfered with or unreasonably disturbed other occupants or the landlord; as a result, I find the landlord has not established grounds for the issuance of the Notice under section 47(1)(d)

Grounds: Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

For the reasons above stated, I find that the landlord has not met the burden of proof on a balance of probabilities that the tenant *seriously* jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Summary

I grant the tenant's application and cancel the One Month Notice. I dismiss the landlord's claims without leave to reapply.

The tenancy shall continue until it is ended in accordance with the agreement and the Act.

Conclusion

I grant the tenant's application and cancel the One Month Notice. I dismiss the landlord's claims without leave to reapply.

The tenancy shall continue until it is ended in accordance with the agreement and 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: September 13, 2021

Residential Tenancy Branch