



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHLAND ASSET MANAGEMENT CO.
LIMITED and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 28, 2021 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated June 21, 2021 (the “Notice”). The Tenant also sought reimbursement for the filing fee.

The Tenant appeared at the hearing with T.L. and B.L. to assist. The Agents for the Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

During the hearing, the Agents confirmed the correct Landlord name which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and the oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 01, 2014 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. The parties agreed rent is currently \$879.00 per month due by the first day of each month. The Tenant paid a \$362.50 security deposit.

The Notice was submitted as evidence. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by L.A. The effective date of the Notice is July 31, 2021. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The parties agreed the Notice was served on, and received by, the Tenant on June 21, 2021.

Agent L.A. for the Landlord testified as follows in relation to the grounds for the Notice. The Tenant's dishwasher has been clogged with food 10 times over the course of the tenancy. The Agents for the Landlord have had to attend the rental unit numerous times due to the Tenant's dishwasher being plugged. The Agents have had to unplug the dishwasher and use a shop vacuum to drain the dishwasher. The dishwasher has been clogged with chunks of food which have plugged the drain line. The Tenant has been told to clean off their plates before putting them in the dishwasher to avoid plugging the drain. In the latest occurrence, the Tenant's dishwasher overflowed and water leaked through the ceiling of the unit below.

Agent L.A. referred to invoices in evidence showing a new dishwasher was installed in the rental unit in 2017.

The Tenant testified as follows. The dishwasher was broken many months before the latest occurrence of it overflowing. The Tenant let the Landlord know about multiple issues with the dishwasher including that the door had to be shut many times before it would start and that it would stop halfway through a cycle. Agent W.A. for the Landlord

told the Tenant the dishwasher could not be fixed. The Landlord has not submitted documentation showing the Tenant plugged the dishwasher. The Tenant disagrees with Agent L.A.'s testimony.

T.L. reiterated that the Landlord has not submitted documentation showing the Tenant plugged the dishwasher other than in the June 21, 2021 letter in relation to the latest occurrence. T.L. testified that they spoke to professional repair people about the dishwasher overflowing and were told that many issues could have caused this.

In response to my questions, the Tenant testified as follows. The Tenant thinks agents for the Landlord have attended the rental unit to unplug the dishwasher due to food being stuck in the drain around six times during the tenancy. The agents have told the Tenant to stop putting dishes with food on them in the dishwasher. The Tenant has been very careful to remove food from the dishes and does not know why the dishwasher continues to get plugged.

In reply, Agent L.A. testified that the Landlord has maintenance work orders in relation to the dishwasher in the rental unit and there are a lot more than six.

In addition to the documents mentioned, the Landlord submitted a letter dated July 26, 2021 outlining their position on the Application.

L.A. sought an Order of Possession effective at the end of November.

Analysis

The Notice was issued pursuant to section 47 of the *Residential Tenancy Act* (the "Act") and the following subsection:

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...

(iii) put the landlord's property at significant risk...

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There was no issue that the Tenant received the Notice June 21, 2021. The Application was filed June 28, 2021, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I agree that the Landlord has not submitted compelling documentary evidence of a history of issues with the Tenant's dishwasher being plugged due to food getting stuck in the drain. However, the Tenant acknowledged that agents for the Landlord have had to attend the rental unit to unplug the dishwasher due to food being stuck in the drain around six times. The Tenant also acknowledged that agents for the Landlord told the Tenant to stop putting dishes with food on them in the dishwasher. Further, I am satisfied the Tenant's dishwasher was plugged with food and thus overflowed causing a leak in the unit below on June 21, 2021 because this is documented in the letter from L.A. to the Tenant on the same date. T.L. suggested that the overflow could have been caused by something else based on their conversation with professional repair people. However, I am satisfied L.A. was aware of the reason for the overflow because it is my understanding from the June 21, 2021 letter that L.A. attended the rental unit and observed that the dishwasher was plugged with food thus causing an overflow. T.L. was not present at the rental unit on June 21, 2021 and therefore I am not satisfied T.L. is aware of what caused the overflow. Further, the professional repair people who T.L. spoke to were not involved in the specific circumstances and therefore I do not find their opinion, as relayed by T.L., to be compelling evidence that something other than a plugged drain caused the overflow. It is not enough for the Tenant to suggest other causes for the overflow without providing some compelling evidence to support their position given L.A. attended the rental unit and observed the issue with the dishwasher.

I am satisfied on a balance of probabilities that the Tenant poses a significant risk to the Landlord's property because the Tenant has allowed their dishwasher to become plugged with food approximately six times and, in relation to the latest occurrence, this caused water to leak through to the unit below. The Tenant allowing the dishwasher to become plugged with food such that agents for the Landlord had to attend the rental unit to deal with this issue approximately six times is too many. Further, I am satisfied the Tenant's actions caused water to leak into the unit below. I find water leaks, and the associated damage, to be serious issues in a building. In the circumstances, I am satisfied the Landlord had grounds to issue the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

Given the above, I uphold the Notice and dismiss the Tenant's dispute of the Notice.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have found the Notice complies with section 52 of the *Act* and have upheld the Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective November 30, 2021 at 1:00 p.m.

Given the Tenant was not successful in the Application, the Tenant is not entitled to reimbursement for the \$100.00 filing fee.

Conclusion

The Landlord is issued an Order of Possession effective November 30, 2021 at 1:00 p.m. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

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

Dated: October 26, 2021

Residential Tenancy Branch