



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 6712 INVESTMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, AS, RR, OLC, FFT

Introduction

On August 20, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking permission to assign or sublet the rental unit pursuant to Section 65 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord/owner of the rental unit attended the hearing as well, with F.N. and D.M. attending as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing package and some evidence by email on September 8, 2021. F.N. confirmed that she received this package and that she accepted service of documents by email. Based on this undisputed testimony, I am satisfied that the Landlord has been served with the Notice of Hearing package and some evidence.

The Tenant advised that additional evidence was served to the Landlord by email on October 13, October 21, and December 1, 2021. D.M. confirmed that the Landlord received this evidence; however, he advised that the Landlord was not prepared to respond to the evidence sent on December 1, 2021 as it was served too late. Based on this undisputed testimony, I am satisfied that the Tenant’s evidence, with the exception

of the December 1, 2021 evidence, was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure. As such, I have accepted this evidence and will consider it when rendering this Decision. As the December 1, 2021 evidence was not served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

D.M. advised that the Tenant was served the Landlord's evidence by registered mail on November 22, 2021 and the Tenant confirmed receiving this evidence on that same date. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, I have accepted this evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; 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

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2010, that rent was currently established at \$1,478.00 per month, and that it was due on the last day of each month. A security deposit of \$700.00 was also paid to the Landlord. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Notice was served to the Tenant by being placed in her mailbox on August 15, 2021. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk", because the "Tenant has not done required repairs of damage to the unit/site/property/park", and because of a "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The Notice indicated that the effective end date of the tenancy was September 30, 2021.

D.M. advised that the Landlord was no longer seeking an Order of Possession based on the breach of a material term of the tenancy or the repairs as the repairs to the rental unit have been completed.

With respect to the reason that the Tenant, or a person permitted on the property by the Tenant, has put the Landlord's property at significant risk, he advised that the Landlord discovered in June 2021 that the Tenant had been re-renting the rental unit on Airbnb and that there were discussions about this type of rental being illegal. He submitted that on June 11, 2021, the Tenant acknowledged that she must stop re-renting the rental unit. However, he referenced an Airbnb ad that was submitted as documentary evidence which indicated that the rental unit was still available until June 15, 2021. He also suggested that the city has prohibited Airbnb, and similar such rentals, and he attempted to reference a document which supported this position. However, it appears as if the Landlord uploaded the incorrect file, as what was submitted was a copy of a building permit.

D.M. referenced other documents submitted to support the Landlord's position that the Tenant's re-renting of the property was contrary to city by-laws and was not permitted. While he does not have any documented proof, it is his position that the Tenant did not move into the rental unit and she continues to rent out the rental unit after being advised to refrain from doing this. He cited a Land Title Search which revealed that the Tenant owned a property, and he suggested that this demonstrates that she does not live in the rental unit herself.

Finally, he referenced a spreadsheet that the Tenant submitted as documentary evidence which appeared to be the Tenant's record keeping of all of the units that she rents, and then subsequently re-rents to other people through Airbnb. He indicated that

the Tenant simply redacted the dates for the rental unit after June 10, 2021 so it is not clear if the Tenant is still re-renting the property or not.

The Tenant advised that she did have a conversation in June 2021 with the Landlord, that she was made aware that re-renting the rental unit on Airbnb was prohibited, and that she stopped immediately. She stated that she was living in another apartment that she herself rented, and that when she was advised that the rental unit could no longer be rented out on Airbnb, she made arrangements to move back into the rental unit. She stated that she moved back in sometime in August 2021, but she was not sure of the actual date. She claimed that F.N. witnessed her move back into the rental unit; however, F.N. refuted this.

The Tenant provided contradictory submissions with respect to when she allegedly moved into the rental unit, and she provided conflicting testimony regarding the status of the apartment that she allegedly left when she decided to move back into the rental unit. She did not provide any documentary evidence to demonstrate that she moved from a different property and into the rental unit.

She confirmed that the Land Title Search document was of a duplex that she owned, and she submitted that she leaves one half of the duplex vacant for family to visit and occupy. As well, she cited personal reasons for not living there. She stated that the other half of the duplex was rented to a long-term tenant.

After being extremely vague and evasive in her responses, the Tenant eventually confirmed that she rents out multiple properties and then re-rents those properties as part of some sort of "licensing" business that she operates. She acknowledged that the spreadsheet that she submitted as documentary evidence was an accounting schedule of all those properties, including the rental unit. She submitted that this spreadsheet confirms that she no longer re-rents the rental unit.

D.M. advised that the Tenant has a property that she owns that remains vacant. Both he and F.N. confirmed that there is a still key lockbox outside the rental unit, which he believes supports the position that the Tenant is not residing in the rental unit currently.

The Tenant advised that the lockbox is actually there for her children so they have access to the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads 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

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

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As such, the onus is on the party issuing the Notice to substantiate the validity of the reason for service of the Notice. Furthermore, given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the reason on the Notice that the Tenant, or a person permitted on the property by the Tenant, has put the Landlord's property at significant risk, I find it important to note that D.M. was either disorganized or unfamiliar with the matters related to this file as he had to be continually prompted to provide relevant and direct submissions about the reason for service of the Notice. In fact, as he did not make it entirely clear what the point of his submissions were, I had to sum up and then confirm with him that the crux of his arguments was that the Tenant's actions of re-renting the rental unit put the property at significant risk as the Landlord would be fined if these actions continued.

Given that the Tenant has acknowledged the conversation with the Landlord in June 2021 that these types of Airbnb rentals were prohibited by the city, I accept that this likely is the case. However, I do not find that D.M. has provided sufficient documentary evidence to support that the city has expressly indicated that Airbnb rentals were prohibited. Furthermore, while he suspects that the Tenant may still be renting out the property contrary to the city's rules, I do not find that he has submitted sufficient

evidence to substantiate that the Tenant has continued to do so after being warned to refrain from such activity, nor has he corroborated his speculation that the Tenant has not moved back into the rental unit. In addition, I do not find that D.M. has provided sufficient evidence to support the significant risk that is alleged.

I do find it important to note; however, that the Tenant's demeanour and manner with which she provided submissions and responses was vague and extremely evasive, and I am skeptical of the truthfulness of much of what she testified to, especially given the many contradictory and conflicting answers. It is evident that rather than residing in a rental unit, she rents out multiple properties and then re-rents them out to other people under some guise of a "licensing" business. It is also evident by her deliberate ambiguousness that she is cognizant of the fact that her actions with these properties are likely not entirely above board as she is reluctant to provide much detail about anything and she attempts to deflect from providing direct responses to questions. I found her contradictory and dubious testimony likely to be a result of her submissions being created in the moment during the hearing.

Consequently, I find the Tenant to lack credibility and I am doubtful that she is using the rental unit for the intended purpose of residing in it. Similarly, I am skeptical that the Tenant is residing in the other properties that she rents, and she likely also re-rents those out contrary to the *Act* and/or municipal laws, under some sort of "business enterprise". The Tenant is cautioned that doing so may be contrary to the *Act* and local municipal laws, and this will likely jeopardize her tenancies. Given that the Tenant applied for a request to assign or sublet the rental unit, which is not permitted under the *Act* as she is in a month-to-month tenancy currently, I find that this supports the likelihood that it is her intention to continue to rent the rental unit out contrary to the city's rules.

Regardless, based on my assessment of the totality of the evidence before me, as the burden of proof rests with the Landlord to support the reason the Notice was served, I am not satisfied that the Landlord has sufficiently substantiated the ground for ending the tenancy. Ultimately, I am not satisfied of the validity of the Notice, and as a result, I find that the Notice is of no force and effect.

While the Notice may have been cancelled, which favours the Tenant, I do not find that the Tenant was successful in this Application whereby recovery of the \$100.00 filing fee would be granted.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause of August 15, 2021 to be cancelled and of no force or effect. This tenancy continues 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: December 10, 2021

Residential Tenancy Branch