



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- to recover the cost of the filing fee.

The hearing convened originally on November 15, 2021, and was adjourned due to teleconference issues. No written or oral evidence was submitted at that hearing.

The participants appeared at both the original hearing and the reconvened hearings. At the reconvened hearing, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

The parties were affirmed and were informed at the start of the hearing that recording a dispute resolution hearing is prohibited. This is due to the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties did not have any questions about my direction.

All parties gave affirmed statements they were not recording the hearing.

The parties confirmed receiving the other's evidence and the landlord confirmed receipt of the tenant's application. No issues were presented regarding the service of the evidence or application.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, digital, and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 provides that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find the tenant's claim for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement is not sufficiently related to the most urgent matter in his application, which I have determined is his request to cancel the Notice. I am exercising my discretion to dismiss that portion of the tenant's claim with leave to reapply. I informed the parties of this decision at the hearing. Leave to reapply is not an extension of any applicable time limit.

As another preliminary matter, both parties filed a signed copy of their Mutual Agreement to End a Tenancy (Agreement), on form #RTB-8.

While evidence was taken on this Agreement at the beginning of the hearing, with a view to a possible resolution of the remaining issue, the issue was ultimately not settled. As a result, I find this Agreement not relevant or determinative to the issue of whether the Notice should be upheld or cancelled. Additionally, as the issue of enforcement of the Agreement was not before me, I have not considered it for this Decision.

Issue(s) to be Decided

Should the landlord's Notice be cancelled?

Background and Evidence

The written tenancy agreement filed in evidence shows a tenancy start date of October 15, 2020, monthly rent of \$1,600, for a fixed-term through October 31, 2021. The tenancy agreement provided that the tenancy converted to a month-to-month tenancy thereafter.

Filed in evidence by both parties was a copy of the Notice, which was dated July 13, 2021, for an effective date of August 31, 2021. The landlord listed as reasons for ending the tenancy were that the tenant or person permitted on the residential property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and/or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The evidence indicated that the Notice was issued in response to the tenant denying the landlord's real estate agent entry to the rental unit on June 30, 2021, to show the home to a prospective buyer. The Notice also listed that the tenant approached the real estate agent while in her car waiting and informed the agent that he would not permit entry and the showing did not occur. The landlord wrote that the tenant made a complaint to the real estate council, making allegations about circumstances that did not occur. For these reasons, the tenant attempted to harm the relationship between the landlord and their real estate agent, which unreasonably disturbed the landlord and significantly interfered with the landlord, according to the landlord's Notice.

The landlord also wrote that the denial of entry seriously jeopardized the lawful right of the landlord.

The landlord's legal counsel (counsel) submitted that in accordance with the Act, the landlord provided the tenant proper written notice that the real estate agent would enter the rental unit on June 30, 2021, to show the property to a prospective buyer. Instead of allowing the entry, the tenant acted aggressively towards the agent, according to counsel. Counsel submitted that there was no written agreement between the tenant and the landlord that real estate showings would be limited to Sundays, between 3:00 pm and 6:00 pm. The text message evidence supports this submission.

Counsel submitted that the tenant falsely accused the real estate agent of events that did not occur that day, when making a complaint to the real estate board.

Counsel referred to the filed binder of evidence, which included text message communication between the parties and notices of entry for various matters and reasons.

The tenant submitted that the Tenancy Policy Guideline prohibits an unreasonable amount of real estate showings, and the landlord made repeated attempts to intrude on his quiet enjoyment of the rental unit in selling the property.

The tenant submitted that the text message communication shows that the parties had a written agreement that real estate showings would be limited to Sundays, between 3:00 pm and 6:00 pm. The tenant said that this was the reason he denied entry to the real estate agent on June 30, 2021, in an effort to limit unreasonable intrusions. The tenant submitted that the landlord had attempted at least eight other occasions to interrupt his quiet enjoyment.

The tenant referred to the text message communication evidence provided by the landlord as well as the text message evidence he provided.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice in this dispute was issued under section 47(1)(d)(i) and (ii) of the Act, which permits a landlord to end a tenancy in cases where a tenant or person permitted on the residential property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I have carefully reviewed and considered the oral, written, and digital evidence submitted by the parties.

In this case, I find the landlord submitted insufficient evidence to support the first ground listed on the Notice. The landlord contends that the tenant did not allow a real estate showing and inappropriately interacted with her real estate agent, causing a potential harm to the relationship between the landlord and the real estate agent. I find an inappropriate interaction by the tenant, even if true, does not rise to the level of being interference, significant or otherwise, or a disturbance, unreasonable or otherwise, to the landlord. I was not presented evidence that there was another occupant of the residential property.

As to the second ground listed, the landlord posted a notice of entry on the tenant's door on June 26, 2021, for entry on June 30, 2021, for the landlord's real estate agent to show the residential property to a prospective buyer. The tenant denied entry to the home, which the landlord asserts seriously jeopardized the lawful right of the landlord.

The text message communication evidence shows me that the parties had a cordial and amicable relationship, until it began to dissolve around June 19, 2021. I do not find this to be the fault of the tenant, however, as the text message evidence filed by both parties showed that the tenant cooperated with the landlord in many instances while she was selling the home. The tenant allowed contractors, showings, home inspectors and the landlord to enter the rental unit for various reasons, such as the landlord dropping off a lawnmower so the tenant could mow the lawn, for several months, without impediment.

One text message from the tenant to the landlord alerted her to the fact a neighbouring house was burning and that he was watering the roof to prevent sparks causing fire to the residential property. The text message evidence shows the tenant had cleaned the rental unit and helped in showing prospective buyers around the house when they came around.

For these reasons, I find it reasonable to conclude that there was indeed an agreement between the landlord and tenant that the real estate showings would only occur on Sundays between 3:00 pm and 6:00 pm. June 30, 2021, in this case was a Wednesday. The text message evidence purports to memorialize this agreement in writing. The tenant had been very cooperative otherwise for months on many other occasions, from my reading of the evidence.

Nowhere in the evidence can I find support that a one-time denial of entry on a Wednesday, when an agreement is in place that the showings be on Sundays between

3:00 pm to 6:00 pm, constitutes a serious jeopardization of the landlord's lawful right, which was to sell the property.

For the above reasons, I find on a balance of probabilities that the landlord has not met the onus of proving the grounds on which the Notice was issued. Accordingly, I order that the Notice **is cancelled, and it is of no force or effect**. The tenancy shall continue until it is ended in accordance with the Act.

Paragraph 72(2)(a) of the Act sets out:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other...the amount may be deducted...in the case of payment from a landlord to a tenant, from any rent due to the landlord...

Accordingly, I grant the tenant recovery of his filing fee of \$100. The tenant may deduct the amount of \$100 from a monthly rent in full satisfaction. The tenant should advise the landlord when making the deduction so that the landlord does not consider that a rent deficiency to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Conclusion

I order that the Notice is cancelled.

I grant the tenant a monetary award of \$100 for recovery of the filing fee.

I dismiss the portion of the tenant's application seeking an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, with leave to reapply.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 1, 2021

Residential Tenancy Branch