



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC

Introduction

The Tenant applies to cancel a One-Month Notice to End Tenancy dated October 25, 2021 (the “One-Month Notice”) pursuant to s. 47 of the *Residential Tenancy Act* (the “Act”). The Tenant also seeks return of her filing fee pursuant to s. 72.

This matter was previously set for hearing on December 17, 2021 but was adjourned to the present hearing date as the Landlord could not attend as she had recently had a surgery. The Tenant did not attend the December 17, 2021 hearing.

P.J. appeared at the hearing on her own behalf as Landlord. The Tenant did not appear, nor did someone appear on her behalf. The hearing began as scheduled. As the Tenant failed to attend the hearing, it was conducted without her participation as provided for in Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that she was not recording the hearing.

The Landlord advised that she served the One-Month Notice by way of registered mail sent on October 25, 2021 and has provided a tracking receipt as proof of the same. I find that the One-Month Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenant to have received the One-Month Notice on October 30, 2021.

The Landlord advised that she served the Tenant with her responding evidence by posting it to the Tenant’s door on December 2, 2021. The Landlord provides a witness statement from E.C. signed on the same date as proof of service of her response.

evidence. I note that s. 89 of the *Act* does not provide for service of application materials for the present application by posting it to the Tenant's door. However, I am satisfied that Landlord did post her response evidence to the Tenant's door on December 2, 2021. The Landlord confirms that the Tenant still resides at the rental unit. Accordingly, I find that Tenant would have taken note of the Landlord's evidence, that posting application materials is an acceptable form of service under s. 89(2) and find that the Landlord's evidence was sufficiently served on the Tenant pursuant to s. 71(2) of the *Act*.

Issue(s) to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?
- 3) Is the Tenant entitled to return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord indicates that she received a complaint from the upstairs tenant on October 20, 2021 stating that the RCMP attended the residential property to arrest the Tenant. The upstairs tenant told the Landlord that he was afraid of living at the residential property and said he saw guns and money that was in the possession of the Tenant. The Landlord says that the Tenant was arrested for armed robbery. The Landlord provides a screenshot from BC Court Services Online showing that the Tenant has been charged with an offense under s. 344(1)(a.1) of the Criminal Code.

The Landlord indicates that after being notified to these events, she issued the One-Month Notice on October 25, 2021. The One-Month Notice was issued on the basis that the Tenant had engaged in illegal activity that had or likely would adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant. The Landlord provides the following description within the One-Month Notice:

[Tenant]'s child was removed from her care. My house was raided with many RCMP in attendance and [the Tenant] was arrested on October 14, 2021. There was RCMP surveillance on my property at [address] October 15 and 16, 2021.

My neighbor at [neighbouring address] provided video footage to the RCMP. The RCMP reported to my neighbor that a serious crime happened. Forensic teams attended. I will have video of the arrest, and pictures.

I have redacted personal information from the above transcription in the interests of the parties' privacy.

The Landlord further states that there had been previous issues with the Tenant and that she has provided warning letters in the past, including the most recent from July 27, 2021 that was put into evidence. The July 27, 2021 letter details an allegation from the Landlord that the Tenant has been dealing drugs from the residential property and left dog feces in the upstairs tenant's mailbox.

The Landlord received a handwritten note from an occupant in the upstairs rental unit detailing a series of observations they made with respect to the Tenant in the month of July 2021. These handwritten notes were put into evidence by the Landlord.

The Landlord indicates that the Tenant's mother was her co-tenant. The Landlord says that the Tenant's mother told her that she was afraid to live with her daughter. The Landlord advises that Tenant's mother has since vacated the rental unit. The Landlord says that the Tenant has brought in another occupant into the rental unit after her mother vacated. The Landlord says this new occupant was not authorized by her.

The Landlord admits that she has not received any further complaints from the residential property's other occupants since October 20, 2021.

Analysis

The Tenant applies to cancel a One-Month Notice.

A Landlord may end a tenancy for cause, with those causes listed under s. 47 of the *Act*, after issuing a notice to end tenancy not earlier than one month after the notice is received and the day before that rent is payable under the tenancy agreement. Here, the Landlord issued the One-Month Notice on the basis of the cause listed under s. 47(1)(e)(ii). As made clear by Rule 6.6, it is the Landlord's onus to prove that the One-Month Notice was properly issued pursuant to the *Act*.

The Landlord argues that the Tenant's alleged illegal activities warrant an end to the tenancy. Policy Guideline 32 provides guidance with respect to when illegal activities warrant the end of a tenancy and states the following:

The illegal activity must have some effect on the tenancy. For example, the fact that a tenant may have devised a fraud in the rental unit, written a bad cheque for a car payment, or failed to file a tax return does not create a threat to the other occupants in the residential property or jeopardize the lawful right or interest of the landlord. On the other hand, a methamphetamine laboratory in the rental unit may bring the risk of violence and the risk of fire or explosion and thus may jeopardize the physical safety of other occupants, the landlord, and the residential property.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

(Emphasis Added)

Policy Guideline 32 makes clear that there must be a nexus between the illegal activity, the tenancy, and the affect it has on other occupants at the residential property. On balance, I find that the Landlord has failed to established that the illegal activity warrants an end to the tenancy under the present circumstances. The alleged illegal activity is not argued to have occurred at the residential property. The Landlord only became aware of the issue after the Tenant was arrested. Policy Guideline 32 is clear that serious crimes such as robbery, to be considered as justification for ending a tenancy, must have occurred at the residential property. That is not the case here.

The Landlord says that upstairs tenant had seen firearms and money at that was in the possession of the Tenant at the residential property. The Landlord did not witness this herself and relays this information from the upstairs tenant. No statement was provided from the upstairs tenant nor did the upstairs tenant provide sworn evidence. On balance, I find that the Landlord has failed to show that the Tenant was in possession of illegal firearms or stolen money at the residential property.

The Landlord also states that the Tenant's child was removed from her care. Strictly speaking, this is not relevant to the tenancy, is not illegal activity, nor would it have an adverse impact on any other individuals at the residential property.

The most serious aspect of the Landlord's evidence was the alleged fear of both the upstairs tenant and the co-tenant. However, the One-Month Notice appears to have been primarily triggered by the Tenant's arrest in mid-October 2021. The Landlord admits that she has received no further complaint from the other occupants since October 20, 2021. Presumably if the issue of adverse impacts to their quiet enjoyment, safety, security, or physical well-being persisted, the Landlord would have received additional complaints. Again, no sworn evidence or statements from the other occupants on this point.

Finally, the July 27, 2021 letter states that the Landlord had reports that the Tenant was dealing drugs from the residential property. I am not satisfied that the Landlord has proven that the Tenant is, in fact, dealing drugs from the property. The Landlord did not witness the relevant events and is simply relaying what has been told to her by the other tenants, none of whom have provided statements or sworn evidence as part of these proceedings. Further, the One-Month Notice was not issued on this basis as the details provided within it focus exclusively on the Tenant's arrest and not alleged drug activity.

The Landlord also mentions that the Tenant has permitted an unauthorized occupant. That issue, if present, is not the subject of the One-Month Notice as the notice did not list that as the basis for ending the tenancy. Therefore, this point raised by the Landlord at the hearing is not relevant to the present application to cancel the One-Month Notice.

I find that the Landlord has failed to demonstrate that the Tenant's alleged illegal activity warrants the end of the tenancy. Accordingly, the One-Month Notice is cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The Landlord has failed to demonstrate that the illegal activity warrants the end of the tenancy. The One-Month Notice is hereby cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

Under the present circumstances, I decline to grant the Tenant return of her filing fee. The Tenant failed to attend hearings on two occasions. The initial adjournment may not have been necessary had the Tenant attended on December 17, 2021 to provide direct evidence as the Landlord had sent an agent. The Tenant shall bear the costs of her application and dismiss this portion of her claim without 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*.

Dated: January 19, 2022

Residential Tenancy Branch