



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

On August 23, 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”) and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing, with M.G attending as an advocate for the Tenant. The Landlord attended the hearing as well. 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.

M.G. advised that the Landlord was served with the Notice of Hearing package by registered mail on September 10, 2021 and the Landlord confirmed that he received this package. Based on this undisputed testimony, I am satisfied that the Landlord has been duly served with the Notice of Hearing package.

M.G. advised that the Landlord was served with the Tenant’s evidence by registered mail on December 8, 2021 and the Landlord confirmed that he received this evidence. Based on this undisputed testimony, I am satisfied that the Tenant’s 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.

The Landlord advised that the Tenant was served with his evidence by registered mail, but he was not sure when this was done. M.G. confirmed that the Tenant received this evidence in sufficient time; however, he stated that pages two and three were missing from the evidence package. 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. However, given that it is not clear what happened to pages two and three of the Landlord's evidence, I have excluded those two pages and will not consider them when rendering this Decision.

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 claim was 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?

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 March 1, 2020, that rent was currently established at \$1,150.00 per month, and that it was due on the first day of each month. A security deposit of \$575.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant received the Notice on August 19, 2021. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord” and because the Tenant “seriously jeopardized the health or safety or lawful right of another occupant or the landlord.” The Notice indicated that the effective end date of the tenancy was September 30, 2021.

The Landlord initially advised that he gave notice to all his tenants about designated parking spots sometime in August 2021. However, he later changed this submission to August 5, 2021 and then again changed it to August 2 or 3, 2021. He stated that on August 6, 2021, he noticed that a guest of the Tenant was parked in stall number two, which was not the stall designated for the Tenant’s use. As well, there was another guest of the Tenant parked partially in another stall. He approached these guests and advised them to move their vehicles as they were not permitted to occupy the stalls that they were in. He stated that the conversation became heated, and these guests spoke to him in an inappropriate manner. He submitted that he went to discuss this situation with the Tenant, and the Tenant’s guests moved the vehicle the next day.

The Landlord then initially advised that he posted a notice to all his tenants, on August 6, 2021, about not propping the entrance doors open. However, he later changed this submission to August 2, 2021. He stated that he had prior conversations with the Tenant about not propping open these doors as it was a safety concern. He submitted that he noticed that a guest of the Tenant had propped open an entrance door on August 6, 2021, and this guest confirmed that he does this often. He referred to the Tenant’s evidence where she acknowledged that this guest did in fact prop open the entrance door to the building. He stated that this behaviour poses a security issue to residents of the building.

The Tenant advised that the parking stalls were not numbered, and that since the start of the tenancy, she had always been assigned the parking stall which would be considered stall number two. She stated that she never had any complaints about parking her car in stall number two until the incident on August 6, 2021 when her guest was parked in her stall. She stated that the Landlord provided a notice to the tenants on August 2 or 3, 2021 advising them of the requirement to park in the proper stalls; however, he did not indicate which stall belonged to each tenant. She stated that after the incident with the Tenant's guest on August 6, 2021, the Landlord then changed the stall numbers to match with each respective unit. She submitted that she could not speak to the interaction of her guests on August 6, 2021 as she was not present, but she apologized for any behaviour that they may have caused. She stated that her guest subsequently left the parking stall, that was her stall, on August 7, 2021.

The Landlord confirmed that prior to identifying which parking stalls were designated to each unit, the tenants would just park in different spots and there were no complaints in the past as the tenants would simply just park in any available stall.

With respect to the issue of the entrance doors being propped open, the Tenant advised that the first time she was made aware that this was an issue was when she was served the Notice. She was never warned by the Landlord and he only notified the tenants of the building about this issue in October 2021.

M.G. advised that the Tenant's guest did prop open the door on August 6, 2021, but it was not for an extended period of time. He submitted that the Tenant would inform the Landlord if she ever noticed that the doors were propped open, and he noted that on one occasion, the Landlord even propped open the doors himself to allow for the freshly cleaned hallway carpets to dry.

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

(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,

I find it important to note that 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 reasons 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 reasons on the Notice that the Tenant, or a person permitted on the property by the Tenant, has 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 note that the Landlord was not very organized and was unfamiliar with when he may have served notices to the tenants about correcting certain behaviours.

Regarding the parking issue, it appears as if the Landlord did not ever establish which

stall was provided to each specific tenant of the property, and he only attempted to correct this after there were some issues. Given the Landlord's failure to adequately assign designated parking and given that the Tenant had always used stall number two, which her guest was occupying on August 6, 2021, I am not satisfied that the Landlord could reasonably change the stall numbers assigned to the tenants and then use this as a potential reason to attempt to end the tenancy. In addition, as the Tenant's guest vacated the stall the next day, I do not find that the Landlord has satisfactorily established how this scenario would be considered a significant interference or a serious jeopardization of the tenancy.

With respect to the issue of the Tenant or the Tenant's guest barring open the doors, apart from the one incident on August 6, 2021, I find that the Landlord has provided insufficient evidence to support that this is an ongoing behaviour of the Tenant or the Tenant's guest. As such, I am not satisfied that the Landlord has sufficiently substantiated this as a valid ground for ending the tenancy.

I find it important to note that the Landlord also mentioned that it is his opinion that the attitude and demeanour of the Tenant and/or the Tenant's guests were inappropriate, unappreciated, and also grounds for ending the tenancy. While the Landlord has provided little documentary evidence to corroborate his allegations regarding specific comments or actions, it would not surprise me that the Tenant or the Tenant's guests may have conversed in a manner that may be unacceptable. It also would not surprise me if the Landlord may have conversed with the Tenant or the Tenant's guests in a manner that was unappreciated.

However, the granting of an Order of Possession based on cause relies on more significant issues, with documentary evidence to support those allegations, rather than complaints arising from personal differences that the parties cannot manage reasonably through mature interactions. Given the little evidence provided by the Landlord, it appears as if it is more likely than not that the Landlord has simply taken exception to the comments of the Tenant and/or the Tenant's guest as a personal affront. Without more compelling or persuasive evidence to demonstrate how the comments of the Tenant and/or the Tenant's guests would fall under one of the noted reasons for ending the tenancy, I am not satisfied that he has justified service of the Notice for these issues.

Based on my assessment of the totality of the evidence before me, as the burden of proof rests with the Landlord to support the reasons the Notice was served, I do not find

that the Landlord has sufficiently substantiated the grounds for ending the tenancy. Ultimately, I am not satisfied of the validity of the Notice, and as a result, the Notice is of no force and effect.

However, it should be noted that the Tenant is reminded that any inappropriate future actions, or those of her guests, may potentially result in a jeopardization of her tenancy.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause served August 19, 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: January 5, 2022

Residential Tenancy Branch