



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, her advocate and the landlord's agent.

The tenant testified the landlord was served with the notice of hearing documents; this Application for Dispute Resolution; and their evidence, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 6, 2021, in accordance with Section 89. Canada Post tracking information confirms registered mail was received by the landlord on October 12, 2021.

The landlord's agent stated that he did not receive the hearing documents until January 1, 2022 as it was mailed to the landlord's elderly father who did not give it to the agent until that date. The agent also testified that owner of the rental unit and landlord listed on the tenancy agreement lives in the United Kingdom.

The landlord submitted that while he had received the Notice of Hearing documents, he did not receive any evidence from the tenant. I reviewed the tenant's evidence and confirmed that the only two relevant pieces were a copy of the tenancy agreement and the One Month Notice to End Tenancy for Cause.

Based on the evidence of the tenant and the landlord's testimony, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of

the *Act* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a One Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant fail to succeed in cancelling the One Month Notice to End Tenancy for Cause, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement for a one year and one day fixed term tenancy beginning on June 15, 2017 that converted to a month-to-month tenancy on June 15, 2018 for a monthly rent of \$800.00 with a security deposit of \$400.00 paid. I note the tenancy agreement did not stipulate the day in the month that rent was due but the tenant confirmed during the hearing that rent is due on the 1st of each month; and
- A copy of a One Month Notice to End Tenancy for Cause issued on September 1, 2021 with an effective vacancy date of October 1, 2021 citing the tenant:
 - Has allowed an unreasonable number of occupants in the unit/site/property/park;
 - Or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
 - Put the landlord's property at significant risk;
 - Or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
 - Or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security or physical well-being of another occupant of the landlord; and

- Or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

I also note that in the Details of the Event(s) section of the One Month Notice the landlord wrote:

“Strata has issued a Violation Notice Pursuant to Section 135 of the Strata Property Act.

It was reported to the Building Strata Council that a resident of your unit has been seen lighting their crack pipe, cracks and crevices with a butane torch around the building. On August 14, 2021, at approximately 2: 13 a.m. the resident was seen at 10061 main lobby torching the stucco cracks.

Please note that this is a major safety issue at the building. Council advises that the tenant be evicted immediately, or Strata will initiate legal action against you. All damages occurred on common property as a result of the fire will be charged back to you.”

The landlord testified that these events were reported to him by the strata property manager and that he had viewed a video recording of the events in question. He also testified he has been informed that the tenant has another person living with her in the rental unit. The landlord stated that the strata would not provide him with any copies of any evidence.

The landlord stated the strata would not release any of their evidence without the benefit of a summons.

The landlord also testified that the strata has rules around the number of occupants which the tenant has breached by including another occupant. The landlord provided no evidence of this restriction or that he had ever discussed this issue with the tenant.

Analysis

Residential Tenancy Policy Guideline 15 states:

A party requesting a summons must do so in accordance with Rule 5.3 [Application for a summons] of the Residential Tenancy Branch Rules of Procedure. The party requesting the summons is responsible for serving the summons on the witness and must serve the other parties with that evidence and submit it to the Residential Tenancy Branch within the timeframes established for

exchange of evidence in Rule 3 [Serving the application and submitting and exchanging evidence] or as ordered by an arbitrator.

Residential Tenancy Branch Rule of Procedure 5.3 requires that a request for a summons must be submitted, in writing, to the Residential Tenancy Branch (RTB) and must provide specific information. Rule of Procedure 5.4 states that the written request should be made as soon as possible before the time and date scheduled for a dispute resolution hearing. It goes on to say that in circumstances where a party could not reasonably make their application before a hearing, the arbitrator will consider a request for a summons made at the hearing.

In the case before me, I found, above, that the hearing documents had been served to the landlord at the landlord's specified address for service on October 12, 2021. While the landlord's agent testified that he did not receive the documents until January 1, 2022, I find that is through no fault of the tenant.

As such, I find a reasonable time for the landlord to make a request for a summons would have been anytime between October and November, even possibly December 2021. However as the tenant has been living in uncertainty as to the status of her tenancy since she received the Notice to End Tenancy for Cause in September 2021, I find it would be prejudicial to the tenant to wait for this proceeding to adjourn for the landlord to process a summons and obtain evidence that he should have had access to and be able to serve on the tenant months ago.

Therefore, I will not issue a summons to obtain any evidence, at this late time.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) 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, or
 - iii. Put the landlord's property at significant risk;
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,

- ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

While this Application was submitted by the tenant, the burden rests with the landlord to provide sufficient evidence to establish they have cause to end the tenancy. As the landlord has provided no evidence to establish the alleges causes and he has no direct and/or first hand knowledge of any of the events, I find the landlord has failed in his burden to establish any cause to end the tenancy.

Conclusion

Based on the above, I grant the tenant's Application for Dispute Resolution to cancel the One Month Notice to End Tenancy for Cause issued on September 1, 2021, and find the 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 27, 2022

Residential Tenancy Branch