



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated September 29, 2021 ("One Month Notice"), and for an Order directing the landlord to comply with the Act, regulation, or tenancy agreement.

The Tenant, the Landlord, and two agents for the Landlord, S.C. and D.S. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Agent, S.C., said the Landlord had received the Application and the documentary evidence from the Tenant, and that they had reviewed it prior to the hearing. The Agent confirmed that the Landlord had not submitted any documentary evidence to the RTB or to the Tenant.

Preliminary and Procedural Matters

The Tenant provided her email address in the Application, and the Agent provided the Landlord's in the hearing. They confirmed these addresses, and they also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

During the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on her application, the most urgent of which is the claim to set aside the One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the One Month Notice in making my Decision. Therefore, the Tenant's other claim is dismissed, with leave to re-apply, depending on the outcome of this hearing.

During the hearing, the Landlord and Agents took turns interrupting me. They also started off making noises and comments when the Tenant was testifying, until I warned them to stop this behaviour. The grandson came into the hearing about 35 minutes late, and aggressively insisted that he would sort everything out. He claimed that he has rights, but when I asked him to which rights he was referring, he did not respond.

However, I also note from the Agents' testimony that the Landlord, W.S., had been in charge of the tenancies, but unfortunately, W.S. has passed away. I find that the family may have been nervous and unsure of themselves, which may have contributed to their initial, disruptive behaviour.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content. As such, granting the Landlord an Order of Possession is a possibility in this proceeding, depending on the evidence before me.

Jurisdiction

The Parties disagreed about whether the Act applies to this residential housing situation or not. I have used the term "Tenant" and "Landlord" to refer to the Parties throughout the Decision for convenience purposes only, as they are Applicant and Respondents until they are found to be Parties under the Act.

The Parties agreed that they do not share a kitchen; however, the Agents stated that the Landlord uses the bathroom downstairs, as they consider it a common area.

The Tenant said in the hearing, that she was told by the Landlord, W.S., that, other than the laundry, the Landlords live upstairs and the tenants live downstairs. The Tenant said that she has seen the current Landlord in the tenanted area of the basement approximately four times in the prior four years. The Tenant said that the Landlords have bathroom(s), a kitchen, and four entrances upstairs, and that the tenants have the one entrance in the basement, which the Landlord has no need to use.

However, the Tenant also said that the Landlord and his grandson used to appear in the basement a number of times a day; however, she did not indicate why they did this.

The Landlord said:

We've just been consulting with my brother, and we're not okay going through with this process, when it's clearly a shared space, and she's just a boarder with a room. We don't feel comfortable. This isn't the correct jurisdiction.

She has been in this house in a room that she rents for how many years now? If she didn't like it or if we were manhandling her or bullying her, why does she stay? I completely resent that . . . my husband was so good to her. There's no tenancy agreement. I have boarders, only ever boarders.

The Agents confirmed that the Landlord does not feed the people inhabiting the rooms in the basement of the residential property. The Agents could not explain why they were using RTB forms for dealing with the Tenant, if she is not, in fact a tenant under the Act.

The Agents referred to the people occupying the bedrooms in the basement of the residential property as "boarders", although, the Agents acknowledged that they do not feed these people. I note that a common usage definition of "boarder" means "a person who receives regular meals when staying somewhere, in return for payment or services". As the people living in the basement rooms of the residential property are not fed by the Owners, I find that they are not boarders.

Residential Tenancy Branch Policy Guideline 27, "Jurisdiction" states that section 4 of the Act sets out specific types of living accommodation and agreements to which the Act does not apply.

Section 4 of the Act states:

4 This Act does not apply to

...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

...

[emphasis added]

The Agents said that there is no tenancy agreement between the Parties; however, the Tenant submitted a document she had labelled: Letter_from_Landlord_Indicating_beginning_of_Tenancy". This document states the following:

Nov 29/2018

To Whom It May Concern

[Tenant's name] has been a tenant at [rental unit address], since October 2017. Her monthly rent is 525.00 per month.

Sincerely

[Landlord's printed name ("W.S.")]

[Landlord's signature]

The Agents and the Landlord did not dispute that [W.S.] had written this document that the Tenant submitted into evidence.

Section 1 of the Act defines tenancy agreement, as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

[emphasis added]

In addition, the Act defines **"standard terms"** to mean the standard terms of a tenancy agreement prescribed in the regulations. Further, section 12 of the Act states that the standard terms are terms of every tenancy agreement, whether or not the tenancy agreement is in writing.

Policy Guideline #9, "Tenancy Agreements and Licences to Occupy", states the following about this situation:

B. TENANCY AGREEMENTS

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

Other factors

Other factors that may distinguish a tenancy agreement from a licence to occupy include:

- payment of a security deposit;
- the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.

An arbitrator will weigh all the factors for and against finding that a tenancy exists.

When I consider all the evidence before me, overall, I note that the Tenant pays a monthly rent to live in a room in the basement of the Landlord's residential property. I find that the Parties agreed that the Tenant has exclusive possession of the room in the rental unit during her tenancy. She was initially required to pay a security deposit, although, the Parties agreed that this was returned to the Tenant. In addition, the Landlord acknowledged that the Tenant has lived there and paid rent for the right to live there for over four years.

Based on the evidence and authorities before me overall, I find on a balance of probabilities that the applicant is a Tenant under the Act, and that this is a tenancy for which I have jurisdiction to make decisions.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?

- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the tenancy started on October 1, 2017, with a monthly rent of \$525.00, due on the first of each month. They agreed that the Tenant initially paid the Landlord a security deposit, but that it was returned to the Tenant, although they did not say why.

The Tenant submitted a copy of the One Month Notice that she said she received from the Landlord. The One Month Notice was signed and dated September 29, 2021, it has the rental unit address, it was served by being posted to the door of the rental unit on September 29, 2021. The One Month Notice has an effective vacancy date of November 1, 2021, which is automatically corrected by section 53 of the Act to November 30, 2021. The One Month Notice was served on the grounds that the Tenant has adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant of the Landlord.

I asked the Agents to describe what the Tenant has done to adversely affect the quiet enjoyment of another tenant of the Landlord. They said:

For the longest time, she gets very upset and slams doors, she yells at others, screams at other tenants on occasion. She screamed at me - very unstable - and you don't really know what you're going to encounter with her.

I'm picking up bags... But mostly it's her instability. Being in a place where there's other people. The culminating factor is that she wished for my husband or anyone not to come through the hallway. That's all common area. For me to get my laundry, I wasn't to come through to her area. We weren't supposed to be there. We couldn't live with that. That's my house, I can go anywhere in my house, except in her room that she rents.

The Tenant responded, as follows:

I have a room and my own fridge. The Landlord made it clear that I shouldn't cook in there. The Landlord put a fridge in the utility room for the other tenants. There's a microwave, too. The hallway is small. The Landlord said very clearly that they live upstairs. They have four other entrances in the house, and we have a tenant entrance. I have seen the landlady downstairs maybe four times in four years. Her granddaughter comes to clean once a month.

There was an incident when I was doing shift work, and what was happening was that the Landlord was downstairs constantly. So, when I go out of my room, there's a very little hallway to the bathroom, then to the utility room. It was becoming 5 and 10 times a day. You just get out of the shower – he was there. I asked him politely to let me know. When a lady comes out of a shower and a grown man was there.... His grandson would do the same thing. Now I'm being blocked from getting into my room. The Landlord has never used the bathroom downstairs to my knowledge.

When I sent the letter, our relationship was now strained. He said, 'It's my house, and I can go anywhere I want'. I said you told me you live upstairs. If you have to go downstairs, let me know. It was affecting me. He got upset, and he's the one who slammed the door. This put a strain on that. And they began to think I'm not friendly. It's a woman and you have men appearing . . .

The landlady does not use the tenant entrance. I've only seen this landlady downstairs about four times. But her husband and her grandson - there was an issue maybe two years into my tenancy where they began appearing constantly. Because I was going in and out of the shower it was really shocking me. It is very disturbing that I come out of the shower, so I said to let me know. I don't mean if they have to fix anything; from that time there was a strain in our relationship started there.

The Landlord read a letter that her husband had written to the Tenant, as follows:

Dear [Tenant]

The bathroom is private with a lockable door. The common area includes the hallway, washer and dryer, ground floor, garage doors. . . and it is available to any member of the family at any time. Quiet time is 11 pm nightly.

It is not remotely possible to my family to grant... your unreasonable demand. You need to find a new... this is your official 90-day notice to vacate your room. At [address]

For your peace of mind and mental comfort. Your screaming, door slamming. . . is very disturbing. My family has been traumatized.

I asked the Agents specifically why they served the Tenant with the One Month Notice,

and they said:

Maybe she's right, maybe there is a tenancy. When things started to go really south with [the Tenant]. My mother can't deal with the Tenant. I researched it carefully, and got independent legal advice, and the lawyer said that the arb will know whether this is a tenancy thing or not.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for 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, or
- (iii) put the landlord's property at significant risk;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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.

The onus to prove their case is on the person making the claim. In most circumstances this is the person who applied for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord alleged that the Tenant yells and screams and slams doors,

which causes a disturbance for the other tenants and the Landlord. However, they did not direct me to any evidence they had submitted from other tenants about this allegation. Further, I find that the Landlord's and Agents' behaviour in the hearing talking about and to the Tenant was disrespectful and inconsiderate, and if this is how they treat her in the residential property, it is not surprising that she reacts.

Now that the Landlord has discovered that the Act does apply to this situation, **I caution the Landlord (and/or her Agents) to become familiar with her rights and obligations under the Act.** The Tenant – all of the tenants - must be accorded the rights that they are entitled to under the Act, regulation, and Policy Guidelines.

When I consider all the evidence before me overall, I find that the Landlord has not provided sufficient evidence to meet their burden of proof on a balance of probabilities, to support the validity of the One Month Notice. I, therefore, find that the Tenant is successful in her Application, and I cancel the One Month Notice and find that it is void and unenforceable. The tenancy will continue until ended in accordance with the Act.

The Tenant's claim for an Order for the Landlord to Comply with the Act or tenancy agreement is dismissed with leave to reapply.

Conclusion

The Tenant is successful in her Application to cancel the One Month Notice, as the Landlord failed to provide sufficient evidence to support the validity of the grounds set out on the One Month Notice. The One Month Notice is cancelled and is of no force or effect. The tenancy will continue until ended in accordance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 23, 2022

Residential Tenancy Branch