



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, LRE, CNC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order requiring the landlord to comply with the Act pursuant to section 62;

BW attended as agent for the landlord (“the landlord”). The tenant attended. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenant acknowledged receipt of landlord’s evidence. I find the landlord served the landlord in accordance with section 89 of the *Act*.

The parties’ email addresses to which the Decision shall be sent were confirmed.

The parties confirmed they were not recording the hearing.

Preliminary Issue – Service

The landlord did not acknowledge receipt of the tenant's materials except for the Notice of Hearing. The tenant acknowledged she did not provide a copy of the tenant's evidence to the landlord.

As the tenant has not complied with the Act by providing a copy of her evidence to the landlord, I will not reference the tenant's submitted materials in my decision.

Preliminary Issue – Order of Possession

I informed the parties that in the event I dismissed the application to cancel the Notice and found that it was issued in compliance with the Act, I was required under section 55 of the Act to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Preliminary Issue – Dismissal of Claims With Leave to Reapply

The tenant applied for various remedies under the *Residential Tenancy Act* (the "Act").

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the issues before me at the start of the hearing, I determined that the most pressing issue dealt with whether the tenancy is ending. As a result, I exercised

my discretion to dismiss, with leave to reapply, all the grounds on the tenants' application except for the following:

- Application to cancel the One Month Notice pursuant to section 47.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Cancellation of One Month Notice pursuant to section 47?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord submitted a copy of the tenancy agreement and testified to the background of the tenancy as follows:

INFORMATION	DETAILS
Beginning Date	Sep 1, 2020
Rent payable on first of month	\$1,725.00
Security deposit	\$862.50

The tenant's unit is in a building with 26 floors and 282 buildings.

The landlord testified they issued a One Month Notice to End Tenancy for Cause as follows:

INFORMATION	DETAILS
Type of Notice	One Month Notice
Date of Notice	October 21, 2021
Effective Date of Notice	November 30, 2021

Date and Method of Service	Posting, October 21, 2021
Reasons for Issuance	Significant interference
Application for Dispute Resolution filed - date	October 25, 2021

A copy of the One Month Notice was submitted which is in the standard RTB form. The reason for the termination is stated: *the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

The landlord testified as follows. The One Month Notice was issued following altercations between the parties on October 16 and 18, 2021. The tenant had complained to the landlord that the unit was cold. The tenant came to the landlord's office on the earlier date and she was "shouting, screaming and cursing". The tenant refused to leave, and the police were called.

The landlord further testified that the tenant returned on October 18, 2021 and argued with the agents about why the police had been called. She was "shouting and screaming".

The tenant vehemently denied the landlord's evidence. The tenant testified as follows. Her unit was cold, and her complaints were not taken seriously. She did not raise her voice during the meetings. The tenant acknowledged that she refused to leave the office on October 16, 2021, until a solution was put in place for the temperature in her unit. The reasons she was given the Notice related to "false claims. The agent BW was a "bully and disrespectful"; BW had provoked the tenant as well as taken revenge upon her.

The landlord submitted evidence relating to events between the parties which occurred after the One Month Notice was issued. This evidence is not considered.

The landlord submitted a witness statement from the agent CL stating the tenant was "loud and assertive" in the second meeting. The witness CL was not called to provide evidence.

The landlord did not submit warning letters to the tenant in evidence. The landlord testified the tenant's behaviour during the two above mentioned meetings was sufficient to warrant issuing the Notice.

The landlord requested an Order of Possession.

The tenant requested that the One Month Notice be cancelled.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 47(1)(d) of the *Act* states:

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,

The parties disagreed on what took place during the two meetings.

The onus to prove their case is on the person making the claim. 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.

Therefore, it is incumbent on the landlord to establish their claims.

Based on the evidence the landlord produced at the hearing, I do not find any documentation amounting to a written warning informing the tenant that she may be in violation of the tenancy agreement because her behaviour significantly interfered with or unreasonably disturbed the landlord, the only grounds alleged in the Notice. I find the circumstances described by the landlord, without sufficient supporting evidence, fail to meet the threshold required.

In consideration of the evidence and testimony, I find that the landlord has failed to meet the standard of proof on a balance of probabilities that the tenant significantly interfered with, or unreasonably disturbed the landlord or another occupant, the only grounds upon which they issued the One Month Notice.

Accordingly, I cancel the One Month Notice. The tenancy will continue until it is ended in accordance with the agreement and the Act.

Conclusion

The One Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the agreement and the Act.

The tenant's applications under sections 62 and 70 are dismissed 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*.

Dated: March 07, 2022

Residential Tenancy Branch