



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order for the Landlord to comply with the Act, *Residential Tenancy Regulation* (the "Regulations") and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, CM, and the Tenant, DS, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord's agent personally served the One Month Notice on December 12, 2021 and the Landlord provided proof of service of that notice. The Tenant confirmed receipt of the One Month Notice. I find that the One Month Notice was served on the Tenant on December 12, 2021 pursuant to Section 88(a) of the Act.

The Tenant personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on December 24, 2021 (the “NoDRP package”). The Landlord confirmed receipt of the NoDRP package on December 24, 2021. The Tenant served her evidence by registered mail on January 24, 2022. DS referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was served with the NoDRP package on December 24, 2021, in accordance with Section 89(1)(a) of the Act. I find that the Landlord was deemed served with the Tenant’s evidence on January 29, 2022 in accordance with Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?
4. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on March 1, 2013. The tenancy agreement states this tenancy began as a fixed term tenancy which ended on February 28, 2014. The tenancy continued as a month-to-month tenancy. Monthly rent is \$600.00 payable on the first day of each month. A security deposit of \$300.00 was collected at the start of the tenancy and is still held by the Landlord.

The reasons listed on the One Month Notice why the Landlord needs to end this tenancy are 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, and has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. Further details listed by the Landlord state:

What: Interference of renovation of one bedroom (400 sq. ft.) apartment. Interference with Notice to Enter (24 hr) denied entry; seriously jeopardized lawful right of landlord to conduct Non-vacancy renovation, by interference with contractors, landlord plans, and decisions. Unreasonably disturbed landlord by not adhering to warnings, letters, and landlord emails.

Where: [rental unit address]

Who: 11 year long tenant [Tenant's name]

When: November 2021 – various dates to December 2021 and future.

Denied entry Dec 5th/ interfered with potential contractor – denied entry Nov 9th → see attached

The Landlord lives in a city several hours away from the rental unit. The Landlord testifies that starting on October 26, 2021, the Landlord received drawings for her bathroom cabinets and they were not the drawings that she ordered. The Landlord stated that the kitchen people, after visiting the rental unit, advised the Landlord that the Tenant had suggested the design. On December 4, 2021, the Landlord sent a letter to the Tenant with a timeline for the next week. It included:

December 6th – floor install with plumber present to install new toilet when time to do so.

December 7th – Plumber [name] visit to review plumbing situation before removal of cabinets

December 8th – Removal of Cabinets with [company] [name of contractor] and Plumber [name]

December 9th – [Cabinet company] cabinet install – plumber needed [name]

December 10th - [Cabinet company] cabinet install – plumber as needed [name]

December 11th – Inspection of work by [Landlord's Agent] and one of my sons [names] time to be announced.

December 26th – visit from landlord [name] to review construction work done and short Visit with tenant.

The Landlord testified that throughout this renovation, which was just cosmetic changes and did not require the Tenant to vacate the rental unit, the Tenant significantly interfered with the Landlord's arranged plans. The Landlord provided evidence that one of her contractors to do the ceiling tile installation had difficulties getting into the rental unit because his work schedule did not work with the Tenant's schedule. The Landlord

hired someone else to do that job. The Landlord provided testimony that the Tenant complained about work from the different contractor who left the Tenant's home with a dusting mess at the end of the installation.

The Landlord wrote that on December 5, 2021, "*The Tenant refused entry to the Landlord's agent and was aggressive, loud and rude.*"

The Landlord explained there was a period where the Tenant only had water availability from the bathroom tub. She explained that when the plumbing fixtures were removed on December 8, 2021 the contractor determined that the bathroom drain needed to be augered, typical events during a renovation. As of the hearing date, all the renovation work was complete except for backsplashes that need to be installed. The Landlord stated she does not want to do this work with the Tenant still in the unit, so this final work is stalled.

The Landlord met the Tenant on December 24, 2021 and she stated that she did not feel safe with the Tenant. The Landlord felt she should have called the police, but she did not do that. By this time, the Landlord was doing the final inspection of all the completed work, but she said she was to do a thorough inspection, but she could not complete that. The Landlord felt that the Tenant tried to take on her role in the renovation process. She felt the Tenant did not want her to be there, there was lots of inconvenience and disturbance. The Landlord did not feel like the Tenant cooperated in the renovation process and all the Tenant's bad behaviour was condensed into one week. The Landlord said at the end of the work, the contractors were complaining about the Tenant.

The Tenant testifies that she met the cabinet designer one time when the woman met the Landlord at the rental unit. At no point did the Tenant ever speak to the cabinet people over the phone. She stated she was not aware about the issues with the cabinet designs. The Tenant also denies telling the cabinet people to come and install the cabinets in January 2022. The Tenant wanted the new cabinets installed as soon as possible, so this claim by the Landlord is contrary to what the Tenant wanted.

On November 8, 2021, the Tenant said she sent an email to the Landlord stating that she was not successful in pinning down the first contractor who was to do the ceiling tile replacement. The times that he suggested he could come into the rental unit did not work for the Tenant. The Tenant submitted into her documentary evidence that at one point the Landlord told the Tenant, she was going to get the ceiling tile contractor to pick

up two large boxes of ceiling tiles and store them at the Tenant's rental unit. The Tenant was unsure how long she would have to store them, and the Landlord got upset with her and told her she was interfering with the Landlord's renovations. The Tenant felt that she was being helpful to the Landlord, trying to contact this contractor and she stated she was cooperating with all the contractors. After the ceiling tile work was completed, the Tenant sent an email to the Landlord to tell her how well the job had gone, how nice the contractor was and how nice the ceiling looked. The Tenant submitted "*I mentioned that it was a lot of work to move everything out and back in again and that it was so extremely dusty in here that my eyes were burning. I never said anything about the mess that was left behind that I cleaned up.*"

The Tenant submitted on November 12, 2021, the Landlord made a trip to the city where the rental unit is located. The Landlord met with the Tenant. The Landlord presented the Tenant with two notices, one was a notice of intent to enter the rental unit specifying specific dates, the second one was a warning letter detailing the importance of not interfering with the Landlord's right to renovate. The Tenant submitted in her documentary evidence that the Landlord proceeded to clean her ceiling fan, change its lightbulbs and '*demand*' that the Tenant remove a standing cabinet she used in her bathroom above and behind the toilet as it would interfere with the new floor installation work. The Tenant stated the Landlord '*demand* *I take it down right then.*' The floor installation work was planned approximately four weeks after this visit. The Tenant reassured the Landlord that she would have the cabinet down prior to the floor installation work. The Tenant wrote that the Landlord was not happy with this plan, and she '*yelled that it was "Her Apartment" and she had the say about what went on here.*' When the Tenant received the notice of entry from the Landlord and her agent, it did not seem reasonable to the Tenant that the agent was to come into the rental unit to wash and clean behind the Tenant's oven and fridge. The Tenant testified that she could do that work.

The Tenant wrote that the flooring people told her 'that everything was nice and clean' and the installation went well. The Tenant wrote that the flooring people were told to delete the Tenant's phone number from their records, and that the Tenant was not to be contacted. The Tenant stated that sometimes the main door intercom does not work, and if the flooring company did not have her phone number, there would have been no way to reach her.

The Tenant submitted in her documentary evidence that when the Landlord's agent came to the rental unit on December 5, 2021, the Tenant stated, "*I was certainly never*

loud or rude. It was a very short, polite interaction between myself and landlord's agent."
At the time of the final inspection, the Tenant stated the notice said that only the Landlord would be arriving.

The Landlord is seeking to end this tenancy, and an Order of Possession for this end.
The Tenant is disputing the One Month Notice.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

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, or*

...

- (2) *A notice under this section must end the tenancy effective on a date that is*
- (a) *not earlier than one month after the date the notice is received, and*
 - (b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

The Landlord personally served the One Month Notice on December 12, 2021. I find that the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on December 14, 2021. I find that the Tenant has applied for dispute resolution with 10 days after receiving the One Month Notice.

The circumstances of this matter occurred during the course of cosmetic renovations in the rental unit which did not require the Tenant to vacate. The Landlord submits that she was endeavouring to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, make it suitable for occupation by the Tenant, these are the Landlord's obligations pursuant to Section 32 of the Act. The renovation period was of a short timeframe from about the end of October 2021 to the end of December 2021. There is one last outstanding backsplash installation work that needs to be completed. The Landlord is holding off of this work for the outcome of this decision. The Landlord and the Tenant both addressed the difficult periods during this renovation with their individual sides of the story.

This is a brief repeat of the evidence in this matter, the Landlord submitted that the Tenant changed the design of the planned cabinet to be installed in the bathroom of the rental unit. The Tenant denied making any change or being involved with the cabinet making company for this part of the renovation. The Landlord also stated that the Tenant interjected herself in delaying the installation time of the cabinets, the Tenant again denied this claim as she wanted them installed as soon as possible. The Tenant was excited for the installation of the new cabinets.

The same holds true for the ceiling tile work, flooring and countertop installations, and the plumbing work. The Landlord stating that the Tenant significantly interfered with or unreasonably disturbed the Landlord during the renovations; the Tenant maintaining that she remained helpful as much as she could, and that she did not interfere with the Landlord's renovation plans - in contrast, she was excited for them. Neither party brought witnesses to the hearing to substantiate their arguments. Each party gave their own testimony, the Landlord was careful to include Section 47 wording from the Act.

The parties offered phone numbers for contractors for me to contact, but that is not part of the dispute resolution process. Parties can bring witnesses to give evidence to support their submissions. This did not happen.

In this matter the Landlord has the burden to prove the claims in her One Month Notice. In the context of a small apartment renovation, timing of events and coordination of contractors is trying. I understand this. The fact that the Landlord lives so far away also made these renovations difficult. At the end of this matter, on a balance of probabilities, I do not find that the Tenant has significantly interfered with or unreasonably disturbed the Landlord or other occupants of the residential property. A combination of factors contributed to the dysfunction the Landlord has felt. I do not find that this solely rests on the Tenant. The Landlord also claimed that the Tenant seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, and again, I do not find this to be so. At the hearing, the Landlord submitted that the renovations are complete save for the backsplash installations. She has been successful in addressing her Section 32 obligations. I do not find that the Tenant has seriously jeopardized the health or safety or lawful right or interest of the Landlord. I cancel the Landlord's One Month Notice as I do not find cause to uphold it. The Tenant's application to cancel the One Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act.

The Tenant seeks an Order for the Landlord to comply with the Act, Regulation and tenancy agreement. As a courtesy to the Landlord, Section 28 of the Act sets out:

Protection of tenant's right to quiet enjoyment

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

The Landlord owns the residential property; however, during a tenancy, the Tenant has the above rights. I offer this as a reminder to the Landlord, but I do not make any Order for the Landlord to comply with the Act, Regulation or tenancy agreement at this time. This claim in the Tenant's application is dismissed with leave to re-apply.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

The Tenant may withhold \$100.00 from next month's rent to recover her application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 05, 2022

Residential Tenancy Branch