



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL, CNC, OLC, PSF, SS, LRE, LAT, FFT

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application filed on September 14, 2021, is seeking orders as follows:

1. For an order of possession, based on a One Month Notice to End Tenancy for Cause (the "Notice") issued on August 25, 202; and
2. To recover the cost of filing the application.

The tenant's application filed on September 7, 2021, is seeking orders as follows:

1. To cancel the Notice;
2. To have the landlord comply with the Act;
3. To have the landlord provide services or facilities required by the tenancy agreement or law;
4. To suspend or set conditions on the landlord's right to enter the rental unit;
5. To be allowed to change the locks to the rental unit; and
6. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. All parties confirmed under affirmation they were not recording this hearing in compliance with the Rules of Procedure.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice and the landlord's request for an order of possession and both their request to recover the cost filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to reapply should the tenancy continue.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reason given on the Notice. The landlord is only required to prove one of the causes, not all.

Preliminary Issues

Counsel for the landlord submits that despite the tenant having been notified by the landlord in writing when they took possession of the property, multiple times during the tenancy and again in the Notice, the tenant has intentionally named the wrong party in their application for unknown reasons. Counsel submit it was clear in the Notice the landlord's name and service address for the landlord. Counsel stated the tenants claim should be dismissed for this reason.

The tenant testified that they named a director of the company who owns the building. The tenant stated they do not know who the landlord is.

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, **the owner's agent or another person who, on behalf of the landlord,**

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

In this case, I am satisfied that the tenant clearly knew who the landlord is, as the tenant has been notified multiple time throughout the tenancy. Both when the property

transferred hands, in multiple communications and paid their rent to the landlord. The owner of the premises has the right to have an agent represent their interest in the property, which the tenant clearly had the proper service address for the landlord as defined in the Act.

While this might be considered interfering with the landlord's lawful rights, and the tenant may be acting in a manner that is not reasonable or even justified when clearly the service address was provided in the Notice. I cannot find that would be sufficient reasons to simply dismiss the tenant's application.

However, the tenant is now on notice that they must serve the landlords to which they have been instructed. If they fail to do so in the future, their application may be dismissed. A copy of this Decision can be used at any future hearing.

I also have removed the respondents name from the tenant's application and replaced it with the correct name of the landlord.

I have reviewed only evidence that the parties presented at the hearing, and testimony before me that met the requirements of the rules of procedure and which relevant and related to the Notice. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?
Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on July 1, 2015. Rent in the amount of \$829.00 was payable on the first of each month. The tenant paid a security deposit of \$365.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on September 30, 2021.

The reason stated in the Notice was that the tenant has:

- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- put the landlord's property at significant risk

Counsel for the landlord submits that the tenant is in breach of a material term of their tenancy agreement on the basis that they have failed to obtain liability and property insurance as required by their tenancy agreement at clause 29. Filed in evidence is a copy of the tenancy agreement.

Counsel for the landlord submits that the landlord on July 15, 16 and again on July 20, 2021, requested that the tenant provide a copy of their insurance. Counsel submits that on August 17, 2021, they wrote the tenant that they had until August 24, 2021, to provide proof of insurance to ensure compliance with the tenancy agreement or they would end the tenancy.

Counsel submits the tenant did not comply and they issued the Notice for a breach of a material term and that this puts the landlord's property at significant risk because if there is an insurable loss caused by the tenant and it is beyond the landlord's coverage limit, there will be no additional insurance coverage. Further if there is an insurance loss caused by the tenant then the landlord could recover their deductible through the tenant's insurance, which the landlord's deductible for the building is a significant amount.

The tenant testified that their tenancy agreement at clause 29 states "leaving to acquire" and clearly states that it is not a material term. The tenant acknowledged they did receive the landlord's request to provide a copy of their insurance; however, they have not because they believe the landlord is attempting to insert an illegal term into the agreement "material term" and is unlawful.

I have copied clause 29 from the tenant's evidence of tenancy agreement

29. **LIABILITY AND INSURANCE.** The tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause and for third party liability and the tenant agrees that the landlord will not be responsible for any loss or damage to the tenant's property. The tenant will be responsible for any claim, expense, or damage resulting from the tenant's failure to comply with any term of this Agreement and this responsibility will survive the ending of this Agreement.

The tenant will not do, or permit to be done, anything that may void the landlord's insurance covering the residential property or rental unit, or that may cause the landlord's insurance premiums to be increased. Unless the landlord is in breach of a lawful duty, the tenant releases the landlord from any liability in connection with the use by the tenant or tenant's guest of the rental unit or the residential property. *looking to acquire*

[Reproduced as written]

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The parties entered into a tenancy agreement on June 10, 2015, and the tenancy was to start on July 1, 2015. As a term of the tenancy agreement the tenant agreed to carry sufficient insurance to cover the property against loss or damage.

I am satisfied that tenancy agreement is clearly written that the “tenant agrees to carry sufficient insurance”. This cannot be construed to mean otherwise. Clearly upon signing the tenancy agreement the importance of this was discussed, because it is circled, and it is noted on the tenant's copy that they are “looking to acquire” not “leaving to acquire”. This would be a reasonable comment because the tenancy had not yet started.

Clearly the intention of the parties at the time they entered into the tenancy agreement was that the tenant would acquire appropriate insurance. The tenancy agreement does have to state that this is a material term, as it is the fact surrounding the creation of that tenancy agreement. Clearly the tenant had to have known this was a material term of their tenancy agreement that they were required to obtain sufficient insurance as specified in their tenancy agreement.

I do not find that requiring a tenant to have tenant's insurance is unlawful, in anyway, or contrary to any provision of the Act. This is for the protection of the property should the tenant cause damage, such as a fire starting in their rental unit caused by their actions. The tenant insurance would cover not only their personal property loss but would also cover the cost of the damage caused to the premises. While the landlord may also have insurance; however, it would be the tenant's insurance that would cover the landlord's insurance deductible and any other cost associated as determine appropriate by the

insurance companies. Without that insurance the landlord may be in a position of significant loss and/or risk to the premises.

In this case, the landlord has requested proof of insurance, which is reasonable for the landlord to do from time to time, as it is a requirement of the tenancy agreement that the tenant carry sufficient insurance. This is the only way for the landlord to determine that the tenant is not in breach of their tenancy agreement. The tenant could simply have done so, by either giving the landlord a copy of their insurance policy or a letter from their insurance provider stating they had the required insurance.

The tenant was asked for the proof of insurance multiple times and given a final notice that they must provide proof of compliance no later than August 24, 2021. The tenant did not comply with the final notice, even though they had many opportunities to do.

I find the tenant has breached a material term of the tenancy agreement, which was not corrected even after given written notice to do so. I find this also puts the landlord's property at significant risk. Therefore, I find the Notice valid and remains in full force and effect. I find the tenancy legally ended on the effective date of the Notice and the tenant is overholding the premises. Therefore, I dismiss the tenant's application to cancel the Notice.

As I have ended the tenancy for the above reasons, I do not find it necessary to consider the evidence or testimony given for other reason of significantly interfered with or unreasonably disturbed another occupant or the landlord as stated in the Notice.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession.

As I have no evidence before me regarding whether or not April 2022 rent was paid, as this hearing commenced on March 29, 2022. I find it appropriate to extend the effective vacancy date to April 30, 2022, pursuant to section 66 of the Act.

Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **April 30, 2022, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Since the landlord has been successful with their application, I find the landlord is entitled to recover the cost of filing their application from the tenant. Therefore, I grant the landlord a monetary order in the amount of **\$100.00** and the landlord is authorized to deduct that amount from the tenant's security deposit if full satisfaction of this award.

Conclusion

The tenant's' application to cancel the Notice is dismissed.

The landlord is granted an order of possession. I grant the landlord a monetary order for the cost of filing their application and the landlord is authorized to deduct that amount from the tenant's security deposit in full satisfaction of this award.

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: April 11, 2022

Residential Tenancy Branch