



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, CNC

Introduction

On January 21, 2022 the Tenant filed an Application for Dispute Resolution, to challenge the Landlord issuing a One-Month Notice to End the Tenancy for Cause (the “One-Month Notice”). Additionally, they challenged a 10-Day Notice to End Tenancy for Unpaid Rent, and pleaded for more time in which to make their application to do so. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 22, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – service of the Notice of Dispute Resolution

The Tenant in the hearing affirmed they gave the Notice of Dispute Resolution (the “Notice”) within 3 days of that initial Application, after receiving the Notice from the Residential Tenancy Branch on February 3, 2022. They stated they presented the document to the secretary in the Landlord’s office within 3 days as required.

The Landlord presented that they only received the Notice via registered mail that the Tenant sent to provide their documentary evidence to the Landlord for this hearing. The Tenant sent that registered mail on March 31 and the record they provided for this hearing shows its delivery on April 1.

I find it more likely than not that the Tenant presented the Notice to the Landlord’s office for its delivery directly to the Landlord. Given the level of detail in their recollection, I

grant that they accomplished service in this manner to the Landlord; they named the secretary, and in the hearing it was apparent they knew the strict timeline involved for service of that document. In sum, I find the service of the Notice by the Tenant was completed as required.

The Landlord provided their evidence to the Tenant via registered mail. The Tenant confirmed they received said evidence.

Preliminary Matter – 10-Day Notice

At the outset, the Tenant advised the only 10-Day Notices they received from the were in August and September 2021. Those matters were closed when the made rent payments covering that rent shortage for which the Landlord then sought to end the tenancy.

I find the indication on the Tenant's Application that the Landlord served 10-Day Notice on January 12, 2022 is in error. I dismiss this part of the Tenant's Application for this reason.

Issues to be Decided

Is the Tenant entitled to cancellation or withdrawal of the One-Month Notice issued by the Landlord on January 14, 2022?

If they are unsuccessful, is the Landlord entitled to an order of possession pursuant to s. 55 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement that the Tenant completed in 2007, for the tenancy starting on August 1, 2007. Over the following years the rent increased to the current amount of \$570. Both parties in the hearing stated the agreement was of standard terms.

The Landlord issued the One-Month Notice on January 14, 2022, serving it to the Tenant by attaching it to the door of the rental unit. The Landlord indicated one reason on page 2 of the document:

- Tenant 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.

The details section on the second page provides more information:

- on Jan 12 the Tenant entered underground parking, as captured on building security cameras
- they wrote in red lipstick on the metal panel between the entrance door and the overhead door
- this caused damage, where the lipstick had to be removed by staff, and “was disquieting to the other people who enjoy the lawful use and enjoyment of that property”
- this was contrary to the *Criminal Code of Canada*, s. 430(1)

In the hearing, the Landlord described the events listed in the One-Month Notice, as above. They listed events that transpired prior to the One-Month Notice service date, and described this incident of January 12 as the culmination of harsh messaging to the owner of the property, taking place approximately over the past year. The Landlord wished to cease the escalation, with similar damage to other property owned by the Landlord's organization throughout the greater metropolitan area.

The TT in the hearing reiterated that the sole reason for the Landlord seeking to end the tenancy, as stated on the One-Month Notice, is this singular incident of January 12. They stated no police report was filed for defacement of property as would normally be expected in a case of illegal activity. They questioned the extent of damage involved with this incident, where lipstick may be easily wiped off, citing similar Residential Tenancy Branch dispute resolution decisions regarding graffiti not being deemed “extraordinary damage.”

The Tenant also presented that it is relevant that they have lived in the rental unit for about 15 years. In this case, the penalty – i.e., eviction – is disproportionate to the damage that was caused. Because of their medical condition, the Tenant had no recollection of doing this act.

In response to this, the Landlord presented that the other evidence they submitted for this hearing shows this kind of behaviour from the Tenant is not isolated and has been escalating since approximately mid-2021. They presented also that there is nothing to show the Tenant's behaviour will abate.

Analysis

The *Act* s. 47 provides various grounds for which a landlord may end a tenancy by issuing a One-Month Notice.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. On my review, the act in question does not amount to what the Landlord cites as a violation of s. 430 of the *Criminal Code*; therefore, it is not an illegal act

The *Criminal Code* s. 430 sets out "Mischief", with one sub-category being the wilful destruction or damage of property. I find lipstick writing on a doorway frame made of secure steel is not destruction or damage of property. I find the action of the Tenant here does not amount to an illegal act. The Landlord did not follow up with a police report, and there was no evidence that showed destruction or damage of property wherein an expense to restore the property to its pristine state was incurred.

The other evidence presented by the Landlord does not show illegal activity, and illegal activity is the sole charge that the Landlord isolated as their reason for ending the tenancy. The evidence showing a pattern of abrasive communication from the Tenant – which may constitute significant interference or unreasonable disturbance to the Landlord – does not factor into a cause of illegal activity involving alleged destruction of property.

There is no indication from the Landlord on the One-Month Notice that the Tenant's other actions of abusive language and messaging formed the basis for their serving the One-Month Notice. Without that indication on the document, in any event, the pattern of communication they present, while showing a motive for the Tenant writing in lipstick on the door, does not form part of the ground for ending the tenancy.

Without more detail proof of illegal activity of any sort, I find the One-Month Notice is not valid. The Landlord has not met the burden of proof; I so order the One-Month Notice cancelled.

Conclusion

For the reasons above, I order the One-Month Notice issued on January 14, 2022 is cancelled and the tenancy remains in full force and effect.

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

Dated: April 22, 2022

Residential Tenancy Branch