



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHEENJAY HOLDING LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on February 15, 2022.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

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 reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

On February 4, 2022, the parties were at a previous hearing that was before me. At this hearing the tenant's application to cancel the Notice for Cause issued on September 15, 2021 was heard. I have noted the file number on the covering page of this Decision.

In my Decision made on February 4, 2022, I made the following findings and Order,

“In this case, I am satisfied that the tenant is in violation of the Act, when they changed the locks to the rental unit without the consent of the landlord. While clearly the tenant knows they are in breach of the Act and has refused to give a key based on the verbal demands of the landlord. However, I find the landlord did not give the tenant written notice as required by the Act.

...

Although, I find the landlord may have merit to end the tenancy; however, I find I cannot uphold the Notice, as the landlord has not given the tenant written notice as required by the Act to end the tenancy for breach of a material term and has selected the wrong reasons as the occupants are not a prospective tenant or a purchaser. Therefore, I grant the tenant's application to cancel the Notice.

...

In this case, I find the tenant is in violation of the Act, when they changed the locks and has not given a key to the landlord even after verbally be asked to do so. This puts the landlord's property at risk, if they cannot access the rental unit for emergency purpose, such as when the fire department attended.

I note the tenant in their application states “.. I refuse to give a key to my unit”. I find it appropriate to make the following Order against the tenant.

I Order the tenant that they must give the landlord a copy of the key that gives access to the rental unit no later than 4 PM on February 9, 2022. Should the tenant fail to comply with my Order than the landlord is entitled to issue a new One Month Notice to End Tenancy for Cause, for failing to comply with an order of the director. “

[Reproduced as written]

The parties agreed that the Notice, subject to today's hearing was served on the tenant indicating that the tenant is required to vacate the rental unit on March 16, 2022, as that date is earlier than the Act allows it would automatically correct to March 31, 2022.

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

- ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- ☒ Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The details provided in the Notice,

Details of the Event(s):

DOESN'T FOLLOW THE RTB REPORT TO SHARE THE UNIT KEY WITH US BY 9TH FEBRAURY 2022

The tenant disputed the Notice and provided the following detail in their application for dispute resolution,

Please describe the reason(s) that you are disputing the One Month Notice to End Tenancy for Cause:

Alex said that I didn't give him the key to the suite

In this case, I have amended the Notice, pursuant to section 68 of the Act to include the following ground as it was clear from the tenant that they knew the reason for ending the tenancy, which was for non-compliance with an order made on February 4, 2022.

The landlord testified that it has been an ongoing issue to obtain a key to the premises. The landlord stated the tenant was under an order of the director to provide the key no later than 4 pm on February 9, 2022, which the tenant did not do.

The landlord testified that the tenant simply told them after February 9, 2022, that they had reinstalled the original lock and they should have a key. However, the tenant was informed they did not have a key as there was no point in keeping an old key to which they were informed the lock was changed. The landlord stated as of today's day the tenant continues to refuse to provide the key to the rental unit.

The tenant acknowledged that they did not comply with the Order to provide the key to the rental unit to the landlord as ordered in the February 4, 2022. The tenant stated that they put the original lock back on the door and they believe the landlord has a key and this would satisfy the order made.

Filed in evidence is a letter from the person who installed the lock which they said they did on February 9, 2022, at 3:45 PM.

The tenant confirmed even after being informed by the landlord that they no longer have a key to the original lock that they have not given the landlord a key.

The landlord stated that if they are granted an order of possession they are willing to give the tenant until July 31, 2022, to vacate.

Analysis

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

In this case, the landlord has been trying to obtain a key to the rental unit since it was discovered it had been changed by the tenant. The tenant was Ordered at the previous hearing to provide the key that gives access to the unit no later than February 9, 2022, at 4PM and if they fail to do so, the landlord could end the tenancy.

I find the tenant did not comply with the Order. Although the tenant said they had the original lock reinstalled, that was not the Order I made, nor was this discussed at the previous hearing. The tenant was explicitly told at the hearing, that they must give a key that gives access to the unit.

Further, the lock was changed 15 minutes before the ordered deadline in the February 4, 2022, decision. This leaves me to believe the tenant was purposely disregarding for my Order.

Further, even if I accept the tenant's evidence that they believed this would satisfy the order, which it does not, as they believed the landlord had a key to the reinstalled lock; however, the tenant was informed by the landlord that they do not have a key to the lock as it was disposed of after the tenant had changed the lock.

I find if the tenant truly had the intention of complying with my order, I would expect that the tenant would immediately give the landlord a copy of the key as soon as they were informed by the landlord that they no longer had the key. However, the tenant did not do so and continued to refuse to provide a copy of the key that gives access to the rental unit. I find the tenant fail to comply with the Order of the Director and I find the Notice is valid and remains in full force and effect.

Therefore, I dismiss the tenant's application to cancel the Notice. The tenancy will end in accordance with the Act.

Although the landlord would be entitled to an order of possession on June 30, 2022, as they have accepted rent for June 2022, the landlord has agreed that they would extend the effective date of the Notice to July 31, 2022. I find that is reasonable as that is solely for the benefit of the tenant to find alternative housing.

I find the landlord is entitled to an order of possession effective **July 31, 2022, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I order the tenant that they must provide the landlord with a copy of the key that gives access to the rental unit, within 24 hours of receiving this Decision. Should the tenant fail to comply with this second order the tenant may be referred to the Compliance and Enforcement Unit for investigation and may be subject to an administrative penalty if found to have again breached my Order.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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: June 03, 2022

Residential Tenancy Branch