



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW HORIZON APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, AAT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On April 5, 2022, the tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated April 1, 2022 (the One Month Notice); and
- an order for the landlord to allow access to the unit for the tenant and/or his guests.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord confirmed he received the tenant's Notice of Dispute Resolution Proceeding (NDRP) and materials; the landlord confirmed he did not submit or serve responsive evidence.

Preliminary Matters

Rental Address

As the parties agreed the street name of the rental address named in the dispute contained a typographical error, I have corrected the name of the street on the cover page of this decision. This amendment is in accordance with section 64(3)(c) of the Act.

Unrelated Claims

Rule of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, during the hearing I dismissed, with leave to reapply, the tenant's application for the landlord to allow access to the unit for the tenant and/or his guests.

Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began in or around February 2018; rent is \$450.00, due on the first of the month, and the tenant paid a security deposit of \$225.00, which the landlord still holds.

The landlord testified that the One Month Notice was served on the tenant in person on April 1, 2022; the tenant confirmed receiving it as described.

A copy of the One Month Notice was submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, and states the grounds for ending the tenancy.

The reasons indicated for the One Month Notice are:

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord; and
- the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The One Month Notice served is a version from 2011, which does not contain a Details of the Events section. The One Month Notice was accompanied by a letter from the landlord, which provided further details regarding the reasons for the Notice. The parties agreed that the letter was served on the tenant along with the One Month Notice.

The landlord's letter states that though the tenant has been warned verbally and in writing that he must not allow a specific person to visit his unit, who has been banned from the property, the tenant continues to do so. The letter states that when the banned person and the tenant are drinking, they cause many problems and disturb many tenants. It states that the landlord has received many complaints from other tenants about the pair's late-night fighting, and that the police have been called to the tenant's unit twice due to loud music and arguing.

The landlord testified that every time the banned person visits the tenant, they drink, party, play loud music, and upset other tenants. No documentary evidence or witness testimony was offered in support. The landlord testified he has given the tenant written and verbal warnings. I asked when these disturbances have taken place; the landlord said he cannot recall, and explained that he did not have his files on hand as the new property owners requested them. The landlord stated that the disturbances have taken place "several times over a couple years."

I asked the landlord which material term of the tenancy agreement the tenant had breached, and when the tenant was given written notice to correct the breach. The landlord stated the breach was "not following the rules," and that he did not know when the tenant was provided written notice. A copy of the tenancy agreement was not submitted as evidence.

The landlord stated that as of January 1, 2022, tenants are not allowed to smoke in their units, but the tenant continues to do so.

The tenant testified that the landlord "bullies" his tenants. The tenant testified that he respects the landlord's authority, but that the landlord cannot tell him how to live his life, including who can visit the tenant's unit. The tenant testified the landlord is telling other building managers that the tenant is "high risk."

The landlord testified the tenant had let the banned person live in his unit for about four months without the landlord's permission; the tenant testified that was not true.

Analysis

Based on the parties' testimony, I find the landlord served the One Month Notice on the tenant on April 1, 2022, in accordance with section 88 of the Act, and that the tenant received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act; it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form, because the 2011 version of the One Month Notice, which does not include the Details of Events section of the current version of the Notice, is accompanied by a letter from the landlord providing further detail regarding the grounds.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives it. As the tenant received the Notice on April 1, 2022 and applied to dispute it on April 5, 2022, I find the tenant met the 10-day deadline.

Rule 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the onus is on the landlord to prove the reasons they wish to end the tenancy, as indicated on the One Month Notice. Those reasons are:

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord; and

- the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I accept the landlord's testimony that that the tenant is disturbing other tenants.

However, the landlord provided vague testimony on when these occurrences happened and with what frequency, and did not provide witness testimony, documentary evidence, or even approximate dates. The landlord stated that the disturbances occurred "several times over a couple years," Without further specifics, I am not convinced this meets the bar of significantly interfering with, or unreasonably disturbing, other occupants or the landlord. The landlord has not provided evidence as to what illegal activity the tenant has engaged in, as indicated on the One Month Notice. As for the allegation that the tenant has breached a material term of the tenancy agreement, the landlord has not submitted a copy of the tenancy agreement as evidence, and has not testified as to which particular term was breached, or when written notice to correct the breach was provided to the tenant.

I find on a balance of probabilities that the landlord has failed to prove any of the reasons for the One Month Notice.

Therefore, I cancel the One Month Notice, and find the landlord is not entitled to an order of possession in accordance with section 55 of the Act.

Conclusion

The tenant's application is granted; the tenancy will continue until it is ended in accordance with the Act.

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: August 2, 2022

Residential Tenancy Branch