



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the tenant applied on April 29, 2022 for an order to cancel a One Month Notice to End Tenancy for Cause, dated April 28, 2022 (the One Month Notice).

The parties 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.

Neither party raised a concern regarding the service of documents.

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 of the tenancy. It began March 1, 2020; rent is \$1,764.00, due on the first of the month; and the tenant paid a security deposit of \$869.00, which the landlord still holds.

The landlord testified they served the One Month Notice on the tenant in person on April 28, 2022, which the tenant confirmed.

A copy of the One Month Notice is submitted as evidence. The Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The One Month Notice indicates the tenancy is ending because the tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit.

The Details of the Event(s) section of the Notice lists the dates of five repairs:

07/05/2021 - Replace damage bedroom door
11/02/2021 - Replace damage suite windows - child threw rocks at windows causing damages
03/14/2022 - Repair interior unit - significant damages to walls and doors
04/01/2022 - Repair missing screen exterior window
04/27/2022 - Replace damaged interior door

The landlord testified that maintenance has repeatedly had to repair damage to the unit. The landlord referred me to a list of approximately 40 work orders, submitted as evidence, which document recurring damages over the tenancy, which began March 2020. The list includes items such as: "kid locked in bathroom," "closet door repair," "hole in door," "kitchen cabinets," "replace bedroom door," "toilet clogged," and "broken windows x 2."

The landlord also referred me to a record of damages charged to the tenant, attempts to collect the amounts owing, and payments made by the tenant for damages. The record is submitted as evidence.

The landlord submitted they have had conversations with the tenant about their concerns about the recurrent damages to the unit.

The landlord submitted as evidence photos of the unit showing damages including a clogged bathtub, broken windows, toilet issues, extensive wall damage, damage to kitchen cupboards and closet doors, and damage to window blinds. The landlord testified that the last 5 pages of damage photos are from damage from August 2022.

The landlord submitted that the tenant claims the damage is being done by a child with a disability.

The tenant did not dispute the landlord's evidence regarding damages to the unit.

The tenant testified that one of her three children was hospitalized in February and November of 2021, after he cause damage to the unit. The tenant testified that in

November he had been throwing rocks at the unit, breaking windows. The tenant testified that at the time the child's medications were "off." The tenant testified that the child's care team needed to try other medications, which is a time-consuming process, as it takes weeks to stop one medication and additional weeks for a new one to take effect.

The tenant testified that her child's behaviour was very out of control, and that following his November hospitalization, he moved directly to voluntary foster care.

The tenant testified that the child has not visited the unit since then, and that there has been no further damage to the unit. The tenant testified that she is waiting to feel confident about her child's regulation before she brings him back to the rental unit.

The landlord testified that it is not true that there has been no damage to the unit since November 2021, and referred me to the list of work orders, testifying that there was damage to the unit in January, March, and April of 2022. The document entries for those months include: "repair toilet," "bedrooms door replace," "door handle repair," "wall holes repair," "closet door repair," "toilet clogged again," "replace TP holders," "replace towel rack," "screen replace," and "closet door repair." The landlord testified that these were damages, not wear and tear.

The landlord testified that when maintenance attends to repairs, they must specify whether the issue is due to wear and tear, or if the tenant is responsible for the cost. The landlord directed me to the tenant ledger, submitted as evidence, which records payments the tenant has made for damages.

The tenant reiterated that all of the damage to the unit was from before her child went into care. The tenant testified that she is on a very limited income, that it takes time for the landlord to request payments, and that it takes the tenant time to provide payments.

The landlord testified that when maintenance goes into a unit, they repair all of the damage, restoring the unit to its original state, and if a tenant is not able to pay for the damage they are responsible for, the landlord will arrange a payment plan with them.

Analysis

Based on the parties' testimony, I find the landlord served the tenant the One Month Notice in person on April 28, 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.

The tenant did not dispute the landlord's evidence regarding damages to the unit. The tenant testified that the damage to the unit was done by her child who required medical care, that the child has not returned to the unit, and that he will not return to the unit until she is confident he can regulate his behaviours. The tenant testified that there has been no damage to the unit since the child's November 2021 hospitalization and transition to voluntary foster care.

The landlord has provided testimony and documentary evidence demonstrating that there has been extensive, ongoing damage to the unit since this tenancy began, and that the damage to the unit continued after one of the tenant's children left the unit in November 2021.

Based on the landlord's documentary evidence, I find, on a balance of probabilities, that the tenant has breached the Act, and the landlord may end the tenancy under section 47(f) of the Act, which states:

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:

...

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

Therefore, I find that the tenant's request to cancel the One Month Notice is dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant an order of possession to the landlord. Having reviewed the One Month Notice, I find it

complies with section 52 of the Act. Accordingly, I find the landlord is entitled to an order of possession, which will be effective on September 30, 2022, at 1:00 p.m.

Conclusion

The tenant's application is dismissed; the One Month Notice is upheld.

The landlord is granted an order of possession which will be effective at 1:00 p.m. on September 30, 2022.

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: September 21, 2022

Residential Tenancy Branch