



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated July 7, 2022 (the "One Month Notice") pursuant to section 47; and
- an order that the Landlords comply with the Act, the regulations, or tenancy agreement pursuant to section 62.

The Tenant and the Landlords' agents CC and SA attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

SA confirmed receipt of the Tenant's notice of dispute resolution proceeding package, amendment application, and evidence. I find the Landlords were served with such documents in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged receipt of the Landlords' evidence. I find the Tenant was served with the Landlords' evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Tenant entitled to an order that the Landlords comply with the Act, the regulations, or tenancy agreement?

Background and Evidence

This tenancy commenced on May 1, 2019 and is month-to-month. Rent is \$650.00 per month. The Tenant paid a security deposit of \$325.00, which is held by the Landlords. A copy of the tenancy agreement has been submitted into evidence.

A copy of the One Month Notice has also been submitted into evidence. The One Month Notice is signed by SA and has an effective date of August 31, 2022. It states the reasons for issuing this notice are as follows:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- Breach of 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 provides the following additional details of cause:

The tenant has had as many as ten cats in the unit, she has boxes stacked all over and there is a bedroom that is being used and the couch appears to be made into a bed. There is only one tenant on the rental agreement and multiple visits have failed to yield significant results.

The Tenant's application indicates that the Tenant received a copy of the One Month Notice on July 7, 2022 in the Tenant's mailbox.

SA testified that initially the Tenant had two senior cats which the Landlords were fine with, as the understanding was that the Tenant would not have anymore cats once those cats passed. SA testified it came to the Landlords' attention that there were as many as ten cats in the rental unit. SA testified the rental unit is a small basement suite.

SA stated the rental unit has a smell of cat urine and feces. SA stated that on many walkthroughs, seven to ten cats were observed in the rental unit. SA testified the Tenant was told that the number of cats had to be reduced.

SA testified that the Tenant has stacked boxes throughout the rental unit, which is a fire hazard if the baseboard heaters are turned on. SA stated the couch in the rental unit looks like a bed, as if another person is staying at the rental unit. SA described the rental unit as generally cluttered, with dishes in the kitchen, and has smoke and pet odours. SA stated there are issues with mice in the rental and poison had to be put down several times.

SA testified the Tenant leaves the air conditioning running with windows open. SA explained that energy is included in the rent. SA stated the Tenant's use of power has been unreasonable and is becoming excessive for the Landlords. SA stated the term breached by the Tenant was reasonable use of power. SA testified that the Landlords' property is put at significant risk because a bear could get into the rental unit.

SA testified that multiple visits to the rental unit have resulted in no changes to the situation.

The Landlords submitted the following documents into evidence:

- Letters to the Tenant dated May 31, 2022 and July 7, 2022
- Notices to enter premises dated April 20, 2022, May 31, 2022, and July 7, 2022
- Condition inspection reports dated June 7, 2022, July 6, 2022, and August 11, 2022

The August 11, 2022 inspection report contains the following comments:

- Kitchen – Countertop – cluttered but clean
- Kitchen – Stove/Stovetop – clean
- Kitchen – Oven – missing door
- Living Room – 5 cats still remain
- Living Room – Walls and Trim – clutter along wall
- Living Room – Air Conditioner/Cover – running all the time
- Main Bathroom – Floor/Carpet – clean
- Main Bathroom – Tub/Shower/Taps/Stopper – clean
- Main Bathroom – Window/Coverings/Screens – window open with air condition running
- Master Bedroom (1) – Window/Coverings/Screens – window open w air running

In response, the Tenant testified that she had one old cat and one young cat when she moved into the rental unit. The Tenant testified that when one cat passed away, the Tenant got another cat. The Tenant explained there was a cat that had many kittens. The Tenant testified the SPCA has taken some of the cats away but there were delays due to COVID-19. The Tenant stated there are currently four cats in the rental unit.

The Tenant testified she keeps the air conditioning on all the time and the windows open in case there are any smells. The Tenant testified that she is a smoker and that everything she owns “smells like smoke”. The Tenant stated that she smokes outside.

The Tenant stated she has several medical conditions. The Tenant testified that sometimes she cannot sleep in bed due to getting sores, so she keeps a blanket on the couch. The Tenant stated that it does not mean someone stays with her at the rental unit. The Tenant stated that she is allowed to sleep on her couch.

The Tenant stated there were mice in the suite above the rental unit, in the ceiling, the day that she moved in. The Tenant denied that there were mice in the rental unit. Tenant stated that the boxes are in a corner in the living room and have been there for a long time and the Landlords had been fine with them before.

The Tenant stated that she felt harassed as there were inspections three times in a month. The Tenant stated she is on disability and cannot afford to move.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I note there is a minor typo in the rental unit address as stated on the One Month Notice. I find it was understood by the parties and that it would be reasonable in the circumstances to amend the One Month Notice to correct the address, pursuant to section 68(1) of the Act. I find the One Month Notice otherwise complies with the requirements set out in sections 52 and 47(2) of the Act.

I find the Tenant was served with a copy of the One Month Notice on July 7, 2022 in accordance with section 88(f) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenant had until July 17, 2022 to dispute the One Month Notice. Records indicate that the Tenant submitted this application on July 15, 2022. I find the Tenant made this application within the 10-day dispute period required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Sections 47(1)(d)(iii) and 47(1)(h) of the Act state as follows:

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:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

[...]

(iii) put the landlord's property at significant risk; [...]

[...]

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so; [...]

a. Property at Significant Risk

The Landlords did not submit any photographs of the rental unit into evidence. I have considered the Landlords' agents' testimony regarding odours from cats in the rental unit and a potential fire risk due to stacked boxes and clutter. However, I find there is insufficient information for me to conclude that the physical condition of the rental unit is so cluttered or dirty that the Landlords' property is put at "significant" risk. I find that while the most recent August 11, 2022 inspection report indicates there is some clutter on the kitchen counter and along the living room wall, it also states that several areas of the home are "clean". I find none of the reports mention any issue with mice. I find the Landlords have not provided evidence such as photographs, pest control invoices, or rat poison receipts to support their claim that there is a rodent problem in the rental unit that is caused by the Tenant's actions or neglect.

Furthermore, I find the Landlords did not provide sufficient evidence to demonstrate that the rental unit is put at "significant" risk of entry by a bear, due to the windows being kept open. I find the Landlords' primary concern about the open windows to be related to energy costs, which I will discuss more fully in the section below.

In my view, the Landlords have identified some possible risks to the Landlords' property in the circumstances but have not provided sufficient evidence or details to show that these risks are "significant" and warrant the tenancy being ended.

Accordingly, I conclude the Landlords have not established cause under section 47(1)(d)(iii) of the Act.

b. Breach of Material Term

Residential Tenancy Policy Guideline 8. Unconscionable and Material Terms (“Policy Guideline 8”) defines a “material term” as “a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement”.

Policy Guideline 8 further states:

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

In this case, I find the One Month Notice does not specify which material terms of the tenancy agreement the Tenant is said to have breached. Based on the Landlords’ agents’ letters and testimony, I find the Landlords’ position is that the material terms relate to (i) the number of pets which the Tenant may keep (two cats and then no more pets after those cats passed away), (ii) reasonable consumption of energy in the rental unit, and (iii) additional occupants.

i. Restriction on Pets

I find the Landlords’ agents acknowledged that the tenancy agreement did not contain a specific clause prohibiting pets, but that the parties had verbally agreed the Tenant

would keep only two cats and no more pets after the cats passed away. In my view, if such a term is so important that the “most trivial breach” would entitle the Landlords the right to end the tenancy, this term should have been included in the tenancy agreement in writing. Therefore, I do not find that a restriction or prohibition regarding pets is included as a material term of the parties’ tenancy agreement for the purposes of section 47(1)(h)(i) of the Act.

Nevertheless, I take this opportunity to remind the parties of Residential Tenancy Policy Guideline 28. Pet Clauses, which states as follows:

It is important to note that whether or not there is a pets clause in a tenancy agreement, if a pet causes extraordinary damage, unreasonably disturbs the enjoyment of other occupants of the property or threatens the safety or other lawful rights or interests of the landlord or other occupants, the tenant might be given a notice to end the tenancy. Similarly, if a pet causes damage that might be less than “extraordinary damage”, the tenant might be given a notice to end the tenancy if the damage is not repaired within a reasonable time after the tenant has been given written notice to do so by the landlord.

ii. Energy Consumption

I accept that energy costs for the rental unit have been higher due to the Tenant running the air conditioner with the windows open. However, I find the tenancy agreement does not contain any express terms to explain what would be considered reasonable use of energy by the Tenant. The Landlords also have not provided any figures for the actual energy costs incurred. In these circumstances, I am unable to find that there is a “material term” for the purpose of section 47(1)(h) which has been breached and not corrected within reasonable time such that the tenancy may be ended. In my view, the parties are at liberty to negotiate an amendment to the tenancy agreement to deal with the issue of energy consumption. If the parties are unable to reach an agreement and the Landlords suffer a financial loss from an extraordinary increase in energy costs, the Landlords might be entitled to make an application to increase the rent in addition to the permitted annual rent increases.

iii. Number of Occupants

Based on the evidence before me, I do not find the Tenant to have allowed an additional occupant to move into the rental unit. I find the Tenant’s explanation that she sometimes

sleeps on the couch to be equally possible in the circumstances. Since the Landlords bear the burden of proof, I do not find there is sufficient evidence for me to conclude on a balance of probabilities that someone else is in fact living in the rental unit.

I further find the parties' tenancy agreement, which is in the standard form, does not restrict the number of permitted occupants in the rental unit to one person. Therefore, I find there is no "material term" that was breached for the purpose of section 47(1)(h) under this part. I note clause 11(3) of the tenancy agreement only alludes to an "unreasonable" number of occupants, which is cause for ending a tenancy under a different section of the Act (section 47(1)(c)).

c. Summary

The Landlords have not their burden to establish the grounds for ending the tenancy stated in the One Month Notice under sections 47(1)(d)(iii) and 47(1)(h) of the Act.

I order that the One Month Notice be cancelled and of no force or effect.

2. Is the Tenant entitled to an order that the Landlords comply with the Act, the regulations, or tenancy agreement?

Section 62(2) of the Act states that the director "may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies".

The Tenant stated in her application that she wants the Landlords to comply with the Act, the regulations, and tenancy agreement as follows:

RECTIFY EVICTION NOTICE TO DISABLED TO MOVE NO RESOURCES OR VEHICLE OR HELP AND REASONING UNFAIR TO ANYONE.

I find that as I have already cancelled the One Month Notice, it is not necessary for me to make another order under this part. The Tenant's claim under this part is dismissed without leave to re-apply.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy will continue until ended in accordance with the Act, the regulations, and the parties' tenancy agreement.

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: November 16, 2022

Residential Tenancy Branch