



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on October 31, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding, and the Tenant confirmed receipt of the Landlord's evidence package. I find these documents were sufficiently served.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord stated they posted the Notice to the Tenant's door on June 2, 2022. The Tenant acknowledged receipt of the Notice but does not recall when. The Landlord issued the Notice for the following reasons:

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the Tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the Landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*
- *put the Landlord's property at significant risk.*

Under the "Details of Cause" section on the Notice, the Landlord stated, "The Tenant has left the smoke detectors battery-less, Tenant has left their door unlocked and suite unsupervised, Tenant's daughter who does not live on the property has argued with myself and my daughter, rent and utilities are constantly late."

During the hearing, the Landlord stated that the Tenant has lived in the rental unit for a few years now, and recently their relationship with the Tenant has started to break down. The Landlord explained that the Tenant has been late paying rent In November 2020, January 2021, and April 2022. The Landlord also vaguely referred to a couple of incidents where the Tenant made it difficult to inspect the rental unit. The Landlord pointed to an incident, about 6-7 months ago, where the smoke alarm was going off, and the Landlord had to go downstairs to fix the issue. The Landlord stated that when they went downstairs, the Tenant had disconnected the smoke detector.

The Landlord further stated that they issued this Notice because of "multiple things adding up". The Landlord stated that they issued this Notice because of their concern over his daughter's mental health, as she has gotten in arguments with the Tenant's daughter. The Landlord stated that the Tenant's daughter, who is not supposed to be living in the rental unit, has been aggressive and threatening, which is causing their family stress.

The Landlord also stated that the Tenant has allowed her daughter to move in, which is in violation of the tenancy agreement, although they did not specify which portion of the tenancy agreement has been breached.

The Tenant stated that she has only had her daughter staying with her, part time, for the last 2-3 months, as she prepares to move. The Tenant stated that her daughter still has a residence elsewhere, and has not actually moved in. The Tenant further stated that she only every took the batteries out of the smoke alarm, temporarily, because the alarm was going off, and appeared to have issues. The Tenant stated that eventually the Landlord came and replaced all the smoke alarm batteries. The Tenant stated she would expect the Landlord to be responsible for repairing the smoke alarm.

The Tenant stated that her daughter has not been threatening or aggressive with the Landlord or his daughter, as they assert. The Tenant stated that her daughter had a disagreement with the Landlord's daughter over putting more salt on the walkway.

The Landlord stated they smelled smoke in the rental unit when they went to the door and they suspect the Tenant has been smoking, contrary to her tenancy agreement. The Landlord denies that any smoking has occurred, and stated that on the day in question, they had burned a sandwich on the stove.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the Act. Pursuant to section 90 of the Act, I find the Tenant is deemed to have received the Notice on June 5, 2022, the third day after it was posted on the door. The Tenant applied to dispute it on June 14, 2022. I find the application was made within the allowable 10 day window.

The Landlord issued the Notice on the following grounds:

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the Tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the Landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*
- *put the Landlord's property at significant risk.*

With respect to the first ground selected by the Landlord, regarding late payments of rent, I note the following:

Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a Landlord may end a tenancy where the Tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.
However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the Tenant cannot be said to be “repeatedly” late

In this case, I find the late payments are too far apart, such that I could find they are repeatedly late. I note that there only appears to be 3 late payments over approximately 1.5 years.

Next, I turn to the remaining issues presented by the Landlord at the hearing.

The Landlord cited an issue with the smoke alarm approximately 6-7 months ago. He stated that, since they live upstairs, they came down, and attended to the matter and noticed that the Tenant had disconnected the smoke alarm. The Landlord did not elaborate any further. I note the Tenant acknowledges there was an issue with the smoke alarm, but she stated that it was because the alarms had failing batteries, which have now been fixed. Having reviewed the testimony and evidence on this matter, I do not find the Landlord has sufficiently demonstrated that the issue with the smoke alarm is such that it warrants an end to the tenancy under any of the grounds selected. I found the Landlords statements on this issue lacked clarity and detail and they did not point to any of their evidence in support of this issue.

The Landlord also asserted that his daughter has been disturbed and affected by the negative interactions she has had with the Tenant's daughter. The Landlord also generally referred to the fact that the Tenant's daughter has argued with him, as well. The Landlord asserts that his daughter has to wait in her car to avoid the Tenant's daughter at times, and she also has suffered stress and anxiety as a result of her conflict with the Tenant's daughter. The Tenant denies that her daughter was threatening or aggressive, and suggested that there was a disagreement between her daughter and the Landlord's daughter regarding putting more salt onto the walkway for safety. Ultimately, I found the Landlord's statements on this matter were not sufficiently clear or detailed, and there is a lack of corroborating evidence. I find the Landlord failed to sufficiently demonstrate that he or his daughter have been significantly interfered with, or unreasonably disturbed, based on any of the issues presented.

I note the Landlord takes issue with the fact that the Tenant's daughter has moved into the property. However, I note the Tenant denies that her daughter has moved in, and asserts that she only stays there some nights, to help with packing. Ultimately, I find the Landlord has provided insufficient evidence showing that the Tenant's daughter is residing in the rental unit, contrary to the tenancy agreement. Further, I am not satisfied that this issue is such that it warrants an end to the tenancy under the selected grounds.

Also, I find the Landlord has failed to sufficiently demonstrate that the Tenant, or guest, has been smoking in the rental unit. The Tenant denies that this occurred, and the Landlord has no evidence to support that it happened.

Overall, I found the Landlord's statements lacked sufficient detail and clarity, and I do not find he has met the onus to prove that there is a sufficient basis to end the tenancy under any of the grounds he selected.

Therefore, the Tenant's application is successful and the Notice received by the Tenant on June 2, 2022, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with her application, I grant her the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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 1, 2022

Residential Tenancy Branch