



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

On October 4, 2022, the Tenant filed their Application at the Residential Tenancy Branch:

- to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) served by the Landlord on September 29, 2022;
- for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 16, 2023. Both parties attended the teleconference hearing.

At the outset, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding and prepared evidence from the Tenant. The Tenant confirmed they received the Landlord’s prepared evidence via registered mail. With this assurance, I proceeded with the hearing as scheduled, and all relevant evidence submitted by the parties receives my consideration herein.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, in line with the One-Month Notice, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement for the Application fee for their initial Application, pursuant to s. 72 of the Act?

Background and Evidence

Neither party provided a copy of a documented tenancy agreement; however, they verified the basic information about the tenancy in the hearing. The Tenant pays \$600 per month on the first of each month, with the tenancy starting on August 1, 2017.

The Landlord issued the One-Month Notice on September 28, 2022. This set the end-of-tenancy date on October 31, 2022. The Tenant provided a copy of the One-Month Notice in their evidence. The reasons provided on page 2 of that document are:

- Tenant or a person permitted on the property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord

The Landlord provided the following details on page 2 of the document:

- the Tenant had harsh words to the Landlord on September 19, 2022 regarding access to view the property in line with the Landlord's sale of the property
- this was a "verbal tirade of obscenities", continuing through the whole conversation
- the Tenant had claimed the real estate agents "went through [their] property" during an initial showing
- for the second showing, the Tenant was present, and denied the agent's request to look in the refrigerator, along with a separate room in the basement
- the Tenant informed the Landlord they would "not allow anyone to enter the premises":
- "Consistently late with rent payments" – had to message on the 2nd of each month, not receiving rent until later after that – Oct, Dec 2021; March, July, August, 2022

In the hearing, the Landlord described the agreement that they had with the Tenant to inform them of a showing or agent visit within 24-hour notice. The inner structure of the rental unit details – e.g., drawers built into closets – required some degree of closer inspection by potential buyers and agents. Given that the experienced agents had asked about access in order to view the interior at the rental unit, the Tenant's reticence to assist left the general impression that they had something to hide, possibly hinting at illegal activity. The Landlord also cited the Tenant not apologizing for their harsh comments on September 19.

The Landlord stated that they had no intention to end the tenancy for these reasons; however, it got to the point where potential buyers indicated to the Landlord that they

wanted the Tenant out from the rental unit. Based on some discussion with the Residential Tenancy Branch about the issue, the Landlord was informed that the scenario could be possible grounds to end the tenancy for a form of disturbance to them from the Tenant.

The Landlord provided evidence in the form of their text messages with the Tenant regarding visits from sales agents, and scheduling. In mid-August the Tenant clarified that they would be able to stay in the rental unit during a sales walk-through. The texts are samples of the Landlord advising the Tenant of visits/showings with 24-hour notice. The Landlord clarified that they discussed the issue of opening closets or drawers that would violate the Tenant's concern for privacy.

The Landlord presented the text messages to show "how the viewings became more uncomfortable for prospective buyers and real estate agents." One message from the Tenant on September 14 has the Tenant stating they will not allow more showings due to "one of the groups" entering without knocking and continued looking through the Tenant's closets. The Tenant reiterated this statement on September 19 with their simple response: "you are not allowed in".

By October, the Tenant was still asking for attention to their privacy, owing to visitors going through the Tenant's closets. As shown in a text message provided by the Landlord, this was approximately two weeks after the Landlord served the One-Month Notice on September 28.

The Landlord also provided an account from a listing agent. They described their interactions with the Tenant on various showings, and referred to their text messages to show they set up advanced notice to the Tenant, and allowed the Tenant to be present in the rental unit during showings. The agent summed up the attempt at the sale: "We eventually cancelled the listing of the property, as it proved to be too difficult to sell while tenanted." They attributed the failed sale to the Tenant who was not cooperating.

In the hearing, the Tenant set out that they had discussed the matter of showings with the Landlord, starting in August, to accommodate the Tenant's own work schedule. The topic of closet contents and storage was part of the discussion. The Tenant had some assurance from individual agents that they would not go through closets/drawers; however, that proved not to be the case. On September 19, the Tenant insisted that there would be no showings in the rental unit, leaving the agents/visitors to view an empty other rental unit at the property. The Landlord spoke to the Tenant individually

about this on September 19, which was the heated discussion the Landlord referred to in the One-Month Notice

The Tenant recalled having an agreement with the Landlord about another showing scheduled for September 21. The visiting agent on this date asked for permission to enter another closet in the rental unit, as well as the refrigerator, to which the Tenant replied “no”.

The Tenant described not knowing how they were to present themselves when visitors entered the rental unit for a viewing. They did describe the new property manager entering the rental unit after and providing more clear direction about what would happen in the sales process going forward.

The Tenant also presented, via an advocate who attended on their behalf, that showings were scheduled to even 3 or 4 per day. This necessitated the Tenant to clean up the rental unit, despite their own work schedule. Visiting agents did not consult with the Tenant to explain what would happen, and the Tenant was likely misinformed on the need to look in drawers or other more private spaces. Earlier on, the Tenant was willing to clean out spaces required for viewing, but was not informed what that might be; however, the message from the Landlord was to just leave it.

The Tenant also presented that they were also present for later showings into October, and these were easier to facilitate. From the Tenant’s perspective, the communication was easier with a new property manager in place.

Analysis

The *Act* s. 47(1) provides authority for a landlord to issue a notice to end a tenancy if a tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy.

While the Tenant here was responsible for reacting harshly to the Landlord, I find this was on the basis of continued mixed messaging from the Landlord and other agents who visited the rental unit. There is a significant power imbalance here, matched with a

significant imposition to the Tenant in the form of repeated showings and visits from agents and potential purchasers.

I find the messaging shows a lack of necessary clarity on the finer points of what a showing would entail. It appears that visits and showings in the rental unit became more of an inspection, and I accept the Tenant found this invasive. I accept the Tenant's submission that they earlier offered to have spaces empty for the purposes of rental unit showings; however, the Landlord told them not to do so.

This does not excuse the actions of the Tenant in the particular phone call of September 19; however, the Tenant has now granted they said things that were inappropriate. This was a venting of their frustration with the process, and lack of clarity on what a showing of the rental unit (as part of the property) would necessarily entail. Insofar as the Tenant vented directly to the Landlord, I find this was a moderate disturbance despite the harsh language involved, and not entirely unreasonable. With the onus being on the Landlord, I find they have not shown that this was entirely one-sided or unprovoked in terms of what the Tenant found to be a sensitive situation.

Given that the sales process stretched out over weeks, I find it was not unreasonable for clear instructions to be in place regarding reserved spaces for the Tenant to prepare in advance, keeping these open as areas for browsing. It's not unreasonable that other areas could remain off limits to other visitors not known to the Tenant. I grant this would be distressing in the circumstances, particularly when matched with the implication that the Tenant was deliberately hiding something of a criminal nature.

Though the Tenant was not entirely cooperative in the process, I give greater weight to the Tenant's account that later showings were smoother, and they attributed this to the addition of a property manager more recently. The Landlord provided an account for a realtor who was scheduling showings and undertaking to sell the unit; however, I give greater weight to the Tenant's account. I am not satisfied that the presence of the Tenant or some of their behaviour exhibited during showings or visits foiled the Landlord's efforts at selling the rental unit. The Tenant was told their presence during visits was not a problem; moreover, they were told not to especially make designated closet/drawer spaces available for viewing by outside visitors. Therefore, I find the Tenant's conduct does not amount to significant interference to the Landlord.

With no record from the Landlord of reminders to the Tenant about late rent payments, or other communication stating plainly that would be grounds for ending the tenancy, I don't accept the Landlord intended to end the tenancy for this reason.

For the reasons above, I find the Landlord's grounds for ending this tenancy are invalid. I find the Tenant's conduct did not arise to the Landlord that can be described as "unreasonable" or "significant" based on my review of the evidence, with the onus being on the Landlord to show that was the case.

In conclusion, I order the One-Month Notice cancelled. The tenancy shall continue.

The Tenant was successful in this Application; therefore, I grant reimbursement of the Application filing fee to them. I authorize the Tenant to reduce one upcoming rent payment by exactly \$100, one time, as reimbursement.

Conclusion

I grant the Tenant's Application for a cancellation of the One-Month Notice. That document is of no force or effect, and the tenancy shall continue. Because the Tenant was successful, I grant them reimbursement of the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 24, 2023

Residential Tenancy Branch