



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and for more time than prescribed to dispute a notice to end the tenancy.

The landlord and the tenant attended the hearing and the landlord was represented at the hearing by her daughter, who is an agent for the landlord. The landlord's agent and the landlord and the tenant each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing the landlord's agent submitted that the tenant's evidence had not been received by the landlord, except for a hand-written note dated February 27, 2023 and a physician letter. The parties agreed that the tenant has been served with all of the landlord's evidentiary material.

Any evidence provided by a party must also be provided to the other party, even if they have a copy, because it is important that all parties are aware of what evidence is before me. Since the tenant has not provided all of the tenant's evidence to the landlord, I cannot consider it. The parties agree that the landlord has provided the tenant with all of the landlord's evidence, and all of the landlord's evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated September 30, 2022 was given in accordance with the *Residential Tenancy Act*?

- Has the tenant established that more time should be granted to dispute the One Month Notice to End Tenancy for Cause?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on December 1, 2018 and reverted to a month-to-month tenancy after December 1, 2019 and the tenant still resides in the rental unit. Rent in the amount of \$1,700.00 was originally payable on the 1st day of each month, which has been increased to \$1,768.65, and there are no rental arrears. On December 1, 2018 the landlord collected a security deposit from the tenant in the amount of \$850.00, and collected a pet damage deposit in the amount of \$884.32 on November 4, 2022. Both deposits are still held in trust by the landlord. The rental unit is a top floor apartment in a complex containing 6 units, and the landlord does not reside on the property.

The landlord's agent further testified that on September 30, 2022 the tenant was personally served with a One Month Notice to End Tenancy for Cause. The landlord's agent testified that it is dated September 30, 2022 and contains an effective date of vacancy of October 31, 2022. The reason for issuing it states:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant agreed by text and telephone conversation to move out at the end of October, 2022. The parties set up a time for a move-out condition inspection, and the landlord's agent received a call from movers saying they were coming. Then the tenant advised the landlord's agent on the phone that the tenant would not move out and would go to the Residential Tenancy Branch.

The tenant would constantly leave a fire door ajar in the building on several occasions after warnings verbally, written, and a letter of warning, a copy of which has been provided for this hearing. The tenant left furniture and objects and refuse outside in the hallways, blocking exits. The tenant also laid her hands on the landlord's agent while the landlord's agent was pregnant because the landlord's agent was removing a door stop that was holding a door open. The landlord's agent was just doing her job removing it, and thought the tenant was going to hurt the landlord's agent. It's hard for the landlord's agent to do her job because the landlord's agent fears harm. The tenant has been asked to stop bringing shopping carts, storing shopping carts from various department stores on the

property. A Police file has been commenced. The landlord does not want stolen carts on the property which also blocks exits for other tenants.

The tenant has also put lots of obstructions, such as furniture that can get in the way. The landlord has asked the tenant to move them and she hasn't done that despite warnings from the landlord.

There's so many reasons the landlord wants to end the tenancy; the tenant has assaulted the landlord's agent, keeps opening the fire exit door despite many warnings. and the landlord's agent is scared to go to the apartment, and cannot go alone now.

Numerous photographs have also been provided for this hearing.

The landlord testified that the rental suite is destroyed, the tenant has been late with rent, and obtained a pet without the landlord's knowledge.

The tenant testified that the One Month Notice to End Tenancy for Cause was not disputed within the time allowed because it scared the tenant. The tenant has terrible anxiety and depression, didn't know what to do and was confused. The tenant has provided a copy of a letter from a physician dated February 27, 2023 indicating that the tenant suffers from anxiety and depression, and that due to the medical conditions, the tenant is having trouble to meet deadlines for submitting forms and completing tasks in time.

The tenant paid the pet damage deposit, and one of the reasons the tenant moved there is because they allow pets. The tenant denies ever assaulting the landlord's agent. The tenant is very intimidated by the landlord's agent and would never touch her.

The tenant further testified that she is not seriously jeopardizing anyone's safety. There were shopping carts in the common area by the garbage bins when the tenant moved in. The tenant brought 1 shopping cart so that the tenant could take some things to the Salvation Army. The shopping carts were not stolen by the tenant, but were at the bottle depot, and one was on the rental property. The tenant moved it, and it was never in the way.

The pylon shown in the landlord's photograph was always there as well as wooden wedges. The tenant left them there thinking that's what other people wanted. The tenant would put a wedge in a door when doing laundry so that the tenant could get back in without going all around the building. On September 30, when the landlord's

agent was removing a wooden block from the fire door, the tenant asked for it. The tenant admits that the landlord's agent warned the tenant to keep the fire door closed and not keep it ajar on several occasions, but has not done so since September. The furniture was in the hallway because the tenant was trying to get rid of it.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The One month Notice to End Tenancy for Cause was issued due to on-going behaviors of the tenant, such as blocking exits and leaving fire doors ajar.

SUBMISSIONS OF THE TENANT:

None of the behaviors mentioned by the landlord's agent have been an issue since September, 2022.

Analysis

Firstly, I accept the testimony of the tenant that the tenant suffers from anxiety and depression and was intimidated and confused of what to do after being served with the One Month Notice to End Tenancy for Cause.

However, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. The law also states that a notice to end a tenancy given by a landlord must be in the approved form. Since the landlord has not provided a copy of the One Month Notice to End Tenancy for Cause, I cannot be satisfied that it was given in the approved form. Therefore, I cancel it, and the tenancy continues until it has ended in accordance with the law.

Pursuant to my authority under Section 62 (3), I order the tenant to comply with the *Act* and the tenancy agreement, by refraining from blocking halls and doorways with furniture and refraining from putting stoppers, pylons or any other objects in the doorways. I further order the tenant to refrain from storing shopping carts on the rental property, and to pay rent when it is due. If the tenant fails to comply, the landlord will be at liberty to issue another notice to end the tenancy for breach of this order.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated September 30, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I further order the tenant to comply with the *Residential Tenancy Act* and the tenancy agreement by refraining from blocking halls and doorways with furniture and refraining from putting stoppers, pylons or any other objects in the doorways. I further order the tenant to refrain from storing shopping carts on the rental property, and to pay rent when it is due.

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: March 14, 2023

Residential Tenancy Branch