



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC

Introduction

The Tenant seeks an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking an order canceling a One Month Notice to End Tenancy for Cause (the “One Month Notice”) pursuant to section 47(4) of the Act.

The Landlord attended the hearing. The Tenant, the Tenant’s Advocate, V.K., and a witness for the Tenant, J.D., also attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord on February 15, 2023 in person. The Landlord confirmed receipt of the Materials. Therefore, I find that pursuant to sections 89 and 90 of the Act that Tenant’s Materials were sufficiently served to the Landlord.

The Landlord testified that they served their evidence onto the Tenant on March 10, 2023 by attaching to the door of the rental unit. The Tenant confirmed receipt of the Landlord’s evidence. Therefore, I find that pursuant to sections 88 and 90 of the Act that Landlord’s evidence was sufficiently served to the Tenant.

Issues to be Decided

1. Is the Tenant entitled to an order canceling the 10 Day Notice and the One Month Notice?
2. If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed that the tenancy started on April 1, 2018 and that monthly rent is \$492.25 due on the first day of the month. The Tenant paid a security deposit of \$237.50 which the Landlord still holds. There is a written tenancy agreement but it was not entered into evidence by either party. The Tenant still occupies the rental unit.

10 Day Notice

Both parties agreed that the Tenant had paid the outstanding rent in full within five days of receiving the 10 Day Notice.

One Month Notice

The Landlord stated they issued the One Month Notice as the Tenant was hoarding items and their belongings were in an alley way. They further explained that the Tenant's unit is at the end of a walkway on an upper storey of the rental property and the Tenant's items were blocking their sliding door, which is one of the Tenant's two fire exits. No other tenant's fire exits were affected.

The local fire department had done an annual check of the property and contacted the Landlord by telephone and informed them that items in the way of the doorway would have to be removed. The Landlord stated that the items were removed but they returned a few months later. No official warnings or other documentation have been issued by the local fire department.

A copy of the One Month Notice was entered into evidence by the Tenant. There are nine reasons for issuing the One Month Notice selected by the Landlord. In the Details of Cause section the Landlord makes reference to the Tenant failing to clear a walkway, with further reference to that being a fire hazard, and that the Tenant has fail to allow the Landlord to inspect the premises. The effective date of the One Month Notice is March 3, 2023 and it is signed "3/22/2023" which appears to be a typographical error

and should read February 3, 2023 as this is the date the Tenant confirmed receipt of the One Month Notice. I amend the date signed of the One Month Notice to February 3, 2023 pursuant to section 68(1) of the Act.

The Landlord also stated that the Tenant had belongings covered in a tarpaulin in the courtyard. There had also been incidents involving the Tenant's son who had to be ordered off the property, had damaged the Tenant's door and threatened the Landlord. The Tenant had repaired the door themselves and stated to the Landlord they obtained a police order against their son, but the Landlord was unsure if this was true.

The Tenant stated that their door was damaged when they were in hospital. They found out that the police had kicked in the door when carrying out a wellness check. A homecare worker had seemingly not got the message regarding the Tenant being in hospital and instigated the wellness check. They are working with the police regarding the repair costs, though the Tenant has paid for the cost of repair themselves for now.

The Tenant testified that it is hard for them to deal with their son and their partner. The Tenant has tried to get paperwork to stop them coming but as they don't own the property this has been difficult. The Tenant stated their son has stolen from them and they are working to get a no contact order.

The Tenant stated they had telephoned the head of the fire department and checked with them three or four times regarding any possible danger caused by them. They had been told by the head of the fire department that the Tenant's fire exit was not a concern of theirs and they were only concerned with the stairs at the opposite end of the walkway to the Tenant's unit.

I was referred to photographic evidence submitted by the Landlord. The Tenant referred me to a photograph of a tarpaulin with items surrounding it. They stated none of these items were theirs and this was a yard sale. Other photos I was referred to show a pile of tires, a bench, a barbecue, and some wooden planks within the grounds of the rental property but not near the stairway or walkway. The Tenant confirmed none of these items were theirs either.

The Tenant testified that the only items they left near the stairs were a dolly, which was used by another tenant to move garbage, and a walker to assist their mobility. They were told they could not store these under the stairs.

The Tenant called their Witness, J.D., an Occupational Therapist and asked them how they see the situation overall. J.D. testified that they had worked with the Tenant on mobility and mental wellness. They have been working on improving mobility with a walker and a cane. Due to the Tenant's limited upper body strength they can not lift the walker up stairs so tried to arrange for storage as it is medical equipment and should be stored indoors away from the weather. J.D. stated the request for storage was met with opposition from management of the rental property and they were told it was a fire hazard and that it would be moved onto the lawn.

J.D. further testified that they are working to de-clutter the Tenant's unit, that the Tenant has a hoarding disorder but they are open to treatment. As the Tenant is a fall risk, they are taking steps to make sure the Tenant has a safe space.

The Tenant asked J.D. their thoughts on the fire exit. J.D. testified that they are making sure that the exits are safe and clear of debris and have been working with the Tenant for a year now. There was a planter which was in the way of the exit but this has been removed and the exit is now clear. There were concerns over loose boards and the lack of grip strips on the stairway but the Tenant purchased the grip strips and J.D. installed them. J.D. stated they now have no concerns regarding the fire exits.

The Landlord did not wish to ask any questions of J.D.

Analysis

10 Day Notice

Based on the testimony from both parties, I find that the Tenant paid the outstanding rent in full within five days of receiving the 10 Day Notice. Therefore, I order the 10 Day Notice to End Tenancy for Unpaid Rent dated February 3, 2023 is canceled and is of no force or effect in accordance with section 46(4)(a) of the Act.

One Month Notice

Section 47 of the Act states that a landlord may end a tenancy for cause by issuing a Notice to End Tenancy. Section 47(1) provides the circumstances under which a landlord may issue a Notice to End Tenancy for Cause.

Section 47(4) of the Act states that a tenant may dispute a Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days of receiving the notice. The Tenant confirmed in their Application that they received the One Month Notice on February 3, 2023 and the Application was filed on February 8, 2023. I find that the Tenant filed their Application within the timeframe set out in Section 47(4) of the Act.

Section 52(d) of the Act states that a Notice to End a Tenancy must state the grounds for ending the tenancy. This sentiment is echoed on the One Month Notice to End Tenancy for Cause (RTB-33) forms which confirm that the specifics regarding the Details of Cause, such as what, where and who caused an issue, is required information.

With this in mind, I find the Landlord makes reference to only two issues on the One Month Notice. These issues are that the Tenant's failure to clear the walkway which is deemed a fire hazard and that the Tenant failed to allow the Landlord to inspect the premises. During the hearing, of these two issues, the only the matter regarding the walkway was referred to by either party. As a result, I shall only be considering the Tenant's alleged failure to clear the walkway being a fire risk as a potential ground for upholding the One Month Notice and ending the tenancy.

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy and that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I found the Landlord's testimony regarding the Tenant's failure to clear the walkway to be vague and inconsistent. By the Landlord's own admission, the walkway had been cleared at one time. It was not made clear to me what specific items were causing an issue, if any. I found the testimony of J.D. to be clear and consistent. I found that J.D. had clearly assessed the Tenant's overall health and wellbeing and their environment, including the rental unit and the walkway, as part of their profession as an Occupational Therapist and determined that the walkway was clear and allowed the Tenant to exit the rental unit via the walkway.

I also found the Landlord's testimony regarding any fire risk posed to the rental property to be vague and unclear. It was not clear from the Landlord's testimony what the fire risk was and what it was caused by. I give greater weight to the testimony of the Tenant,

who I find was able to glean more specific information from the head of the fire department about the area of concern and confirm it was not the walkway, but the stairway at the end of the rental property which the Landlord did not allege the Tenant had blocked or otherwise affected at any stage during the hearing.

Overall, I find that the Landlord has failed to prove, on the balance of probabilities, that the circumstances set out on the One Month Notice occurred as alleged and that they justify ending the tenancy.

Furthermore, the Landlord did not at any time during the hearing draw a link between the failure to clear the walkway and one of the reasons for ending the tenancy set out on the One Month Notice and echoed in section 47(1) of the Act.

For the above reasons, I grant the Tenant's Application to cancel the One Month Notice to End Tenancy for Cause dated February 3, 2023. The tenancy continues.

Conclusion

The Tenant's Application is granted. The tenancy continues.

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

Dated: April 27, 2023

Residential Tenancy Branch