Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, PSF

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on January 2, 2023 (the "One-Month Notice"); and
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law.

C.B. appeared as the Tenant and was joined by D.S. who assisted her in her submissions.

The Landlord did not attend the hearing, nor did someone attend on their behalf.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that she served her application and evidence on the Landlord via registered mail sent on February 1, 2023. I am provided with a copy of registered mail tracking receipt as proof of service. The registered mail was sent to the address for service of the Landlord as listed in the One-Month Notice.

I find that the Tenant served her application and evidence in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Landlord received the Tenant's application and evidence on February 6, 2023.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlord did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

Enforceability of the One-Month Notice

Rule 6.6 of the Rules of Procedure sets out the standard and onus of proof. The rule is clear that though applicants generally bear the onus of proving their claims, under certain circumstances, such as when a tenant files to dispute a notice to end tenancy, the respondent landlord bears the onus of proof.

In this instance, the Landlord did not attend the hearing despite being served in an approved method under the *Act*. As the Landlord failed to attend the hearing and adduce evidence on why the One-Month Notice was served, I find that he has failed to prove the One-Month Notice was properly issued.

Accordingly, I grant the Tenant's relief and hereby cancel the One-Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

Issue to be Decided

1) Should the Landlord be ordered to provide services or facilities?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The Tenant advises that she had access to laundry facilities at the property throughout her tenancy, though the Landlord restricted access to them on January 12, 2023 by changing the lock which gave her access to the laundry room. I am provided with a copy of the tenancy agreement, which is silent with respect to laundry facilities.

Section 27(1) of the *Act* prohibits landlords from terminating or restricting access to a service or facility if the service or facility is essential to a tenant's use of the rental unit as a living accommodation or providing that service or facility is a material term of a tenancy agreement. However, s. 27(2) of the *Act* permits landlords to terminate a service or facility, other than those referred to under s. 27(1), if they given a tenant 30

days written notice, in the approved form, and reduce rent in an amount equivalent to the reduction in value of the tenancy agreement from the loss of the service or facility.

The Tenant has provided me with a copy of a Notice Terminating or Restricting a Service or Facility signed by the Landlord on October 13, 2022 (the "Notice"). It says that laundry facilities would be restricted effective November 15, 2022 and that rent would be reduced by $100.00. The Tenant says that she received the Notice on January 3rd or 4th.

In this instance, I find that laundry facilities are not essential to a tenant's use of a rental unit as a living accommodation. Though convenient, laundry facilities are not akin to heating or water, which would clearly be essential to make a rental unit suitable as a living accommodation.

I further find that the laundry facilities are not a material term to the tenancy agreement. I accept that they have been provided since the beginning of the tenancy, which the Tenant says started in September 2020. This does not, however, make it material to the tenancy agreement. Indeed, the tenancy agreement provided to me does not specify laundry facilities are to be provided at all.

Further, the Tenant did not provide any submissions on the how laundry facilities were a material term to the tenancy agreement, other than to mention the inconvenience of having to go to a laundromat. I accept that it is inconvenient. However, whether a term is material to a contract requires evidence of intention of the parties when the contract was formed, such that it was understood to have been material at the outset of the tenancy agreement. I have no evidence to support a finding that laundry facilities were material to the tenancy agreement.

Given this, I find that the Landlord is permitted to give notice restricting access to the laundry facilities provided he complies with s. 27(2) of the *Act*. In this instance, I accept the Tenant's evidence that the Landlord did provide her the Notice on January 3rd or 4th. I further accept that the Landlord restricted access to the laundry facilities on January 12, 2023.

Clearly, the Notice, which sets an effective date of November 15, 2022 and was served on January 3rd or 4th, 2023, is invalid. It is illogical to serve a notice terminating a service or facility setting an effective date for the termination before the notice was ever served.

Further, the 30-day notice requirement had not been complied with at all as access was restricted a mere week after service.

Having said this, the Landlord is permitted to restrict access to the laundry in this tenancy. The Tenant has been paying $100.00 less in rent, which I accept is appropriate given the loss of the laundry facilities. It would be moot, in my view, to order the Landlord to reinstate access to the laundry, which would result in a new notice being served, and access being terminated once more. Though I find the Landlord breached the notice requirements of s. 27(2) of the *Act*, I decline to grant an order reinstating access.

The proper course for the Tenant would be to seek compensation for the loss of the facility over the period in which it was suspended in contravention of the 30-day notice period. However, that is not part of this application, such that I cannot grant that relief. The Tenant may choose to seek such relief but must file an application to do so.

Conclusion

The Landlord failed to prove the One-Month Notice was issued in compliance with the *Act*. It is hereby cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

I find that the Notice terminating access to the laundry facilities was improperly issued. Despite this, I decline to grant an order reinstating access as the issue is moot since the Landlord is permitted to terminate access. The Tenant's claim under s. 27 and 62 of the *Act* is dismissed without leave to reapply.

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: May 16, 2023

Residential Tenancy Branch