



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: Tenant: CNC, MNDCT, LAT, OLC, FFT
Landlord: OPC, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant duly served with each other’s Applications and evidence.

The tenant confirmed receipt of the 1 Month Notice, which was posted on their door on January 26, 2023. In accordance with sections 88 and 90 of the *Act*, I find that the 1 Month Notice deemed served to the tenant 3 days after posting.

Preliminary Issue – Priority Claims

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims relate to the 1 Month Notice to End Tenancy as well as the change of locks to the tenant's rental unit. As the time allotted was not sufficient to allow all the matters to be heard and considered along with these priority claims, I exercised my discretion to dismiss the portions of the tenant's application unrelated to the 1 Month Notice and changing of the locks with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should the tenant be provided with authorization to change the locks to the rental unit?

Are the parties entitled to recover the filing fee for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

This month-to-month tenancy originally began as a fixed-term tenancy on April 1, 2021. Monthly rent is current set at \$1,015.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$500.00, which they still hold.

The landlord served the tenant with a 1 Month Notice on January 26, 2023 providing the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord provided the following reason for why this tenancy should end: *“Tenant is in Breach of lease & crime free addendum. Tenant has installed his own lock and not removing when requested when posted notice, we tried by hand tenant was home so notice was posted. Tenant then called R.C.M.P. This is a frustrated tenancy, still sneaking lady friend into Bldg. Drugs also involed.”*

The landlord testified that the tenant and their guests have repeatedly disturbed other tenants and the landlord in the building, and are involved in what the landlord believes to be illegal activity including buying drugs. The landlord testified that the tenant had signed a Crime Free Housing Addendum as part of the tenancy agreement, and is therefore breaching a material term of the tenancy agreement. The activities listed in the Crime Free Housing Addendum include any drug related criminal activity, solicitation, or any criminal activity that threatens the health, safety, or welfare of the landlord or other tenants/persons on the residential property.

The landlord testified in the hearing that the tenant’s friend who frequents the building dresses in high heels and a mini skirt with their panties hanging out at the back. The landlord testified that the guest has been observed with a crack pipe. The landlord testified that the tenant would bring his friend into his suite, and then call the police to have the guest removed. The landlord included in evidence the multiple warning letters they have sent the tenant about this guest and other behaviour which the landlord believes constitutes a breach of the tenancy agreement.

When questioned by the tenant why CR thought his friend was a prostitute, CR replied that “anyone who dresses like....in public gives the wrong idea”, “showing off underwear and smokes crack”. CR responded that they have the right to enforce rules about acceptable behaviour.

The landlord also testified that the tenant has changed the locks, and refuses to change them back.

The landlord called a witness in the hearing, ES. ES submitted written statements for this hearing, stating that they “have natural abilities that allow me to become aware of my surroundings, about individuals, illegal activities, suspicious behaviour, and much more”. ES states that they have observed the tenant “on numerous occasions go in and out of the building and bring inside transients”, and that they have observed the tenant allowing females into the building who “appeared as if they worked the streets”. ES also stated that the tenant’s “personality clearly reflects that of an angry and bitter tenant with a dark side”. ES expressed concern in the hearing that the tenant and their guests were engaged in “suspicious activity” and emphasized that the building was a family oriented complex.

TR also testified in the hearing as a witness for the landlord. TR testified that they assisted the police in removing the tenant’s friend from his rental unit while he was in

hospital. TR testified that the tenant has harassed the landlord, and does not follow the rules.

The landlord's husband also testified in the hearing. FR testified that they had observed the tenant chasing their wife with a phone in a threatening manner, and that they were so concerned they got out of their car to defend their wife. FR testified that the tenant would film CR without CR's permission, and it appeared that the tenant wanted to hit her.

The tenant denies that they or their guests have engaged in any illegal activity, nor breached the crime free housing addendum. The tenant's friend attended the hearing and testified that they are not a prostitute, that they do not "smoke crack", and that they have a job.

The tenant testified that they and their friend have been harassed by CR, and wrongfully accused of many allegations, including being involved in drugs and prostitution. The tenant does not dispute videotaping their interactions, as they feel that they are being harassed by the landlord and other tenants in the building. The tenant testified that they have a job, and have to defend themselves from the baseless allegations.

The tenant does not deny changing the locks, but testified that they had to do this as they felt threatened and harassed after the landlord had informed others in the building that the tenant is criminal, and had to be watched.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving the landlord has cause to end the tenancy on the grounds provided on the 1 Month Notice.

In light of the testimony and evidence before me, although I find the events that have transpired to be significantly disturbing to the landlord and the other residents in the complex, I do not find there is sufficient evidence to show that the tenant or their guests have engaged in activity that justify the end of this tenancy on the basis of the 1 Month Notice.

The landlord alleges that the tenant and their guests have engaged in illegal activity,

RTB Policy Guideline #32 speaks to the meaning of "Illegal Activity", and what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

I have considered the evidentiary materials submitted by the landlord, as well as the testimony in this hearing. As stated above, the burden of proof falls on the landlord to support their claim. In this case the onus is on the landlord to demonstrate that the behaviour of the tenant or their guests would be considered illegal, and whether this illegal activity is serious enough to warrant the termination of this tenancy.

In this case, the landlord alleges that the tenant or their guests have engaged in illegal activity that has or is likely to damage the landlord's property. I find the majority of the testimony and evidence before me involves allegations that the tenant's friend has engaged in illegal activity, primarily engaging in prostitution and the buying and use of illegal drugs. I find that the evidence submitted by the landlord and their witnesses about the suspected illegal activity are not based on fact, but suspicion. The landlord has not provided any evidence to support that any charges that been laid against the tenant nor their friend or guests related to the alleged illegal activity, and furthermore that this alleged illegal activity has caused, or is likely to cause, damage to the landlord's property. Accordingly, I am not satisfied that the landlord has met the burden of proof to end this tenancy on the basis of illegal activity that has, or is likely to cause damage to the landlord's property.

The landlord also stated that the tenant has breached a material term of the tenancy agreement, and have not corrected this breach within a reasonable amount of time after being given written notice to do so. The landlord testified that the tenant had signed a Crime Free Housing Addendum, which the tenant has breached.

As noted above, I find that the landlord has not met the burden of proof to support that the tenant or their guests have engaged in illegal activity. A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

In this case, although the crime free housing addendum may be considered a material term of the tenancy agreement, I find that the landlord has not demonstrated that the tenant or their guests have been in breach of these terms.

There is also an allegation that the tenant had changed the locks, which is undisputed by the tenant. The tenant responded that they felt that they had to as they feel harassed by the landlord and other tenants in the building. The tenant also filed an application for authorization to change their locks.

Section 31 of the *Act* states as follows:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

In this case, I find that the tenant did not have authorization from the landlord or director to change their locks. I am not satisfied that the tenant has grounds to do so as the tenant has not demonstrated that any parties have entered their rental unit without permission, or contrary to the Act. Accordingly, I dismiss the tenant's application for authorization to change their locks without leave to reapply, and the tenant is ordered to comply with section 31(3) of the *Act* by changing the locks back within 7 days of receiving this order.

I do not find that by changing the locks, the tenant has breached a material term of the tenancy agreement. I find that the tenant has shown genuine concern for the safety and well-being of themselves and their guests, and did file an application requesting permission to do so. Although the tenant did change their locks while awaiting a resolution to this portion of their dispute, I do not find that that the action justifies the end of this tenancy at this time.

Based on the evidence before me, although the landlord and their witnesses feel threatened by behaviour of the tenant and their guests, I find majority of the evidence to be speculative in nature, especially the observations about inappropriate clothing choices or appearance. Although there are allegations that the tenant's female guests are prostitutes or drug users, these allegations are not based on fact, but rather

conjecture. Neither the landlord, nor their witnesses, have qualified themselves as subject matter experts in the areas of crime, drugs, and prostitution, and therefore opinions and observations alone are not sufficient to support that the tenant or their guests are in fact engaging in illegal activity.

Although I do not doubt that the landlord or other tenants in the building are concerned about what takes place in the building, I am not satisfied that the tenant or their guests have put the landlord's property at significant risk, nor am I satisfied that they have unreasonably disturbed the landlord or other tenants, especially to the extent that justifies the end of this tenancy on the grounds provided on the 1 Month Notice.

For the reasons cited above, I find that the landlord has failed to demonstrate to the extent required that this tenancy should end for the reasons provided on the 1 Month Notice, and accordingly I am allowing the tenant's application for cancellation of the 1 Month Notice. The 1 Month Notice dated January 26, 2023 is hereby cancelled, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

I allow the tenant's application to recover the filing fee for this application.

I dismiss the landlord's entire application without leave to reapply.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I allow the tenant's application to cancel the 1 Month Notice dated January 26, 2023. The 1 Month Notice of is of no force or effect This tenancy is to continue until ended in accordance with the *Act*.

I find that the tenant is entitled to recover the filing fee for this application. I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the tenant's application to change the locks without leave to reapply. I order that the tenant comply with section 31(3) of the *Act* by changing the locks back within 7 days of receiving this order.

The remainder of the tenant's application is dismissed with 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: June 29, 2023

Residential Tenancy Branch