



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, PSF, LAT, OLC**

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a One Day Notice to End Tenancy for Cause (the "Notice") issued on March 5, 2023;
2. To have the landlord provide services or facilities required by the tenancy agreement; and
3. To be allowed to change the locks to the rental unit.;

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision

Issue(s) to be Decided

Should the Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord be ordered to provide service or facilities required by law?

Should the tenant be allowed to change the locks?

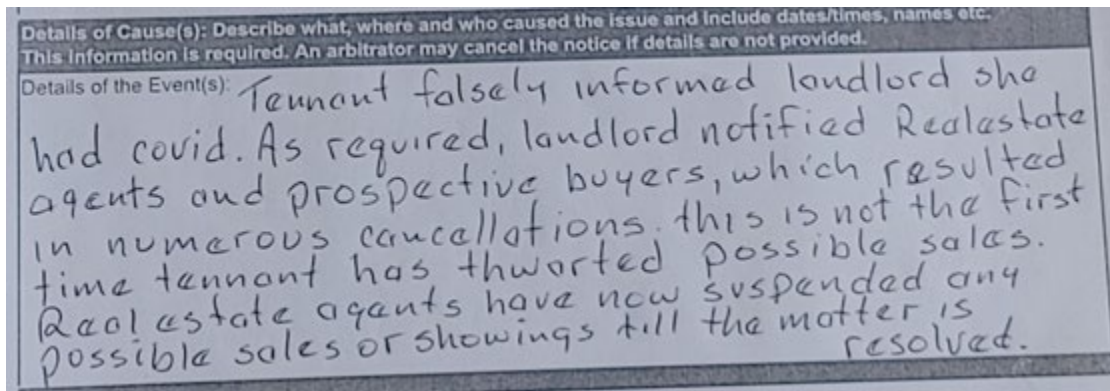
Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on April 5, 2023.

The reason stated in the Notice was that the tenant has:

- Has put the property at significant risk; and
- The tenant knowingly gave false information to a prospective purchaser of the rental unit.

The details of the Notice are as follows:



The landlord testified that the tenant is interfering with their rights to sale the rental unit, by denying access, by yelling at potential buyers that they cannot take videos or picture of the premise and then will give them only 5 minutes to view the premises. The landlord stated that the tenant has also given false information to potential buyers about issues with the property, such as there was no water, when the tenant knew they were

making the repair. The landlord stated that none of the real estate agent will come to bring clients due to the tenant's behaviour.

The landlord testified that the tenant has also claimed to have Covid with no proof which cancelled showings. The landlord stated that the tenant does not want people in their rental unit as the tenant thinks that by seeing the attached unit is sufficient for a prospective purchaser to make a decision, as this is a duplex. The landlord states the tenant refuses any showings if they are not present which is intimidating any potential buyer.

The tenant testified that they want to the landlord to sell the property and even help advertised it on Facebook for a couple of weeks. The tenant stated that have allowed showings, but most of the clients are just simply "looky-loo" and nosey. And have not signed intentions to buy the property.

The tenant stated that they have informed, on one occasion, a prospective buyer that there was no water, because they was no water at the time because they were turning on the taps and that the stairs are unsafe. The tenant stated on one occasion they were sick, and they did not want anyone in the rental unit.

The tenant stated that all showing had to be done when they are there and they bring a friend to be present and they will not allow anyone to take pictures or videos as they have personal items in the premises.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing; I find that the landlord has not provided sufficient evidence to show the reasons stated in the Notice.

Although I accept the testimony before me, that the tenant is more likely than not interfering with the landlord's lawful right to sale the property; however, that was not the reason stated in the Notice. However, I will address that issue later in my Decision.

The details of the Notice state that the tenant falsely informed landlord that they had Covid. Even if the tenant had Covid or flu like symptoms and showing were cancelled that is not giving false information to prospective purchaser about the rental premises. Further, the landlord stated that the tenant gave false information about the well water; however, that is not in the details of the Notice nor was there any supporting evidence submitted.

I find the evidence does not support the Notice was issued for the reasons stated due to sufficient details and supporting evidence. Therefore, I grant the tenant's application to cancel the Notice and the landlord's application for an order of possession and the cost to recover the filing fee is dismissed.

The tenant is also seeking the landlord be ordered to provide service or facilities required by law and to change the locks. These are both related to the lock to which the tenant had already changed to which the landlord does not have a key. Therefore, I dismiss this portion of the tenant's application without leave to reapply.

In this case, after I heard the testimony of parties to ensure the tenant does not interfere with any future showing of the rental unit, I make the following orders under section 62 of the Act.

1. The tenant must not deny access, for any reason, to the rental unit for any showings for a prosecutive buyer, if they receive the required 24 hours notice and it is scheduled at reasonable times (9am to 7pm). The landlord should inform the tenant of the approximately time needed, which must be reasonable.

The above order does not include access to review the exterior areas of the property as they are not entering the rental unit. A prosecutive purchaser does not have to sign any type of document stating their intentions of buying, that is unreasonable as they first have viewed the property and determined if they want to make an offer to purchase. Further, it is not the tenant rights to be involved in the landlord's business.

2. The tenant is not to be present at any future showing of their rental unit, as it has been seen as an attempt to intimidate a prospective purchaser of the rental unit and based on previous behaviour;
3. The tenant is to ensure any valuables or items they do not want seen by prospective purchaser are stored away securely and should they wish to install a

camera in the interior of their rental unit they are to inform the landlord in writing, so the landlord can be informed others that they are being recorded;

4. The tenant cannot stop a prosecutive purchaser from taking pictures of the property, if for a legal purpose, such as financial or other legal purposes. The landlord or their agent must ensure that if pictures are taken they are for the intended purpose and not for the purpose of invading the tenant's privacy;
5. The tenant is not to communicate in anyway, whatsoever, with any potential purchaser;
6. The tenant is not to refer to the landlord or any of real estate agents with derogatory language, such as bitches, sluts as these were reference in some text messages;
7. The tenant must provide immediately a key to the rental unit to the landlord by the end of today July 11, 2023, by sending the key by mail to the landlord's mailing address given at the hearing. The landlord is entitled to give a copy of the key to any of their agents acting on their behalf as the landlord does not live in the local area or to the real estate agent who may need access to the rental unit for showings.

Should the tenant fail to comply with anyone of the above conditions commencing immediately. The landlord is entitled end the tenancy under section 47 of the Act, for non-compliance with an order under the legislation. However, the onus will be on the landlord to prove the breach of my Order, which supporting evidence.

Conclusion

The tenant's application to cancel the Notice, is granted. The tenant must comply with the Orders that I have made above or risk ending their tenancy..

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: July 12, 2023

Residential Tenancy Branch