



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding TERRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: **CNC, OLC**
 Landlord: **OPC, FFL**

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (Act) for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act; and,
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under section 62(3) of the Act.

This hearing also dealt with the Landlord's application under the Act for:

1. An Order of Possession for a One Month Notice under sections 47, 55 and 62 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

Property manager N.T. and property administrator H.K. attended the hearing for the Landlord.

Tenant L.P. attended the hearing for the Tenant.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Service

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by registered mail and by attaching a copy to the Tenant's door on May 19, 2023, the Tenant confirmed receipt of the attached notice on her door, deemed served on May 22, 2023;
- the Tenant's Proceeding Package personally served on May 31, 2023, the Landlord confirmed receipt, served on May 31, 2023;
- the Landlord's Proceeding Package and evidence served by Canada Post registered mail on August 25, 2023, the Tenant stated she never received a registered mail package. The Canada Post website confirmed that two notices were left with the Tenant. I find that the Tenant is deemed served with the Landlord's Proceeding Package and evidence on August 28, 2023;

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matter

Naming parties

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenant's application, the Tenant provided a different name for the Landlord, compared to the name in the Landlord's cross application. The Landlord testified that the name they provided in their application is the correct reference. I asked the Tenant if I had her agreement to amend the Landlord's party name in the application. She agreed, and the correct Landlord name is noted in the style of cause of this decision.

If an amendment to an application is sought at a hearing, an amendment to an application for Dispute Resolution need not be submitted or served. On this basis, I accept that the Landlord is properly named as the current party name and not the name provided for in the Tenant's application. I amended the Landlord's name, and it is reflected in this decision.

Issues to be Decided

Tenant:

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?

Landlord:

1. Is the Landlord entitled to an Order of Possession for the One Month Notice?
2. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on September 1, 2015. The Landlord testified that the monthly rent is \$599.00 payable on the first day of each month. The Tenant testified that the monthly rent is \$636.00. A security deposit of \$200.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has allowed an unreasonable number of occupants in the unit, significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property, seriously jeopardized the health or safety or a lawful right of the Landlord or another occupant, and, the Tenant has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the Landlord gives written notice to do so. The effective date of the One Month Notice was June 30, 2023.

The Landlord provided further details of the causes to end this tenancy as:

April 20, 2023 – letter to tenant about reports of unregistered occupant into the suite.

April 28, 2023 – noise complaint coming from unit 307 received from another tenant below.

April 29, 2023 – caretaker reported an encounter with a male occupant in the unit who was quite upset and raised his voice when asked how long has he been staying in the unit. Caretaker did not feel comfortable.

The Landlord alleges that the Tenant moved in an unauthorized male occupant into her one-bedroom rental unit. The property is a seniors or person with disability housing complex as noted by section 5 of the tenancy agreement. The Landlord claims this person has stayed in the Tenant's unit a long time, and since coming into the property, the Landlord has received many complaints from other tenants and staff.

The Landlord stated they have asked for this person's proof of residency elsewhere, but the Tenant has not complied. They said they would accept utility or phone bills that show that the son does not live in the rental unit.

I reviewed the Landlord's submitted evidence.

On April 20, 2023, the Landlord wrote the Tenant a warning letter about breaching a material term of their tenancy agreement:

It comes to our attention that the male visitor occupant has lived in the above-mentioned unit & accessed the common area for at least 2 weeks without any provided information from the tenant and without the landlord's written permission.

Thus, we require the visitor occupant(s)--who is currently residing in the unit-- to move out within the next 7 days from date of this letter. The unit entry inspection will happen on April 28, 2023.

Should any damage to the suite and/or the building result from the visitor occupant behavior, the Landlord will reserve all legal rights.

No further notice will be sent regarding the same matter.

The Landlord submitted that the Tenant has breached section 14-Occupants and Guests of their tenancy agreement. The Landlord stated they have asked the Tenant for confirmation that her son has an alternative residence, but the Tenant does not respond to their requests for this information. The Landlord does not want to be in breach of their BC Housing operating agreement.

The Landlord uploaded a complaint form received from another tenant on April 28, 2023. The complaint says:

Loud banging coming from upstairs. Been going on since March (middle). Bangs so loud my lights flicker and glass in cabinets shake. Happens during day but gets really bad from 9:30-10:00 pm to 1:00 am to 2:30 am.

The Landlord said they had not given a copy of the complaint to the Tenant as they testified, the Tenant was not home.

The Landlord uploaded a complaint form dated April 29, 2023, where the caretaker reported that they were called to the Tenant's rental unit about needing some tools. The caretaker reported that they could not help the Tenant's son. The caretaker reported in the complaint form:

... Upon leaving asked how long is was staying told him he was only allowed two weeks he got upset and to me it was his mother suite and she's #1 he's #2 and he didn't know he was very intimidating so I left he was raising his voice I didn't feel comfortable stay he did not threaten me at all

The Tenant submitted she is an 80-year-old woman, and her son and grandchildren visit her. The Tenant testified that her son came to look after her rental unit while she was away on vacation. She said the rail in the bathroom fell down, and he asked for someone to fix it or to provide him with tools so he could fix it. The Tenant stated that her son does not live in her rental unit, and that he lives in another city.

The Tenant did not feel it was the Landlord's business to know about her son's living circumstances.

The Tenant stated she was not aware of the noise complaint that the Landlord alleged. She says she does not walk with shoes on in her rental unit, and her suite is carpeted. The only noise she says she makes comes from her vacuum cleaner which is not really noisy. She said it is impossible that there would be noise in the evening, and early morning hours coming from her rental unit.

The Tenant feels harassed by the Landlord.

Analysis

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. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute

a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act states that a landlord may issue a One Month Notice to a tenant if the landlord has grounds to do so. I find the Landlord's One Month Notice was deemed served on the Tenant on May 22, 2023. I find the Landlord's One Month Notice complied with the form and content requirements of section 52 of the Act. The Tenant applied for dispute resolution on May 23, 2023 within 10 days after the date the Tenant received the One Month Notice.

The Landlord testified that the Tenant's rental unit is a one-bedroom suite. The Landlord stated that the Tenant's son was residing in her rental unit. They sought proof from the Tenant that he had an alternative residence, but the Tenant did not respond to their requests for this proof.

The Tenant testified that her son was staying at her place when she was away on vacation, but that he resides in a different city than the rental unit.

Based on the testimonies of the parties, and on a balance of probabilities, I find the Landlord has not proven that the Tenant's son resides in the Tenant's suite. The Landlord has not proven that there are an unreasonable number of occupants in the rental unit. I find the Landlord has not proven cause under section 47(1)(c) of the Act.

The Landlord provided one complaint written from another tenant that they were experiencing noise coming from the Tenant's rental unit.

The Tenant was not aware of this one complaint and does not believe it could have come from her rental unit as she stated she lives very quietly.

Based on the testimonies of the parties, and on a balance of probabilities, I do not find that one complaint from another tenant, if true, would constitute a significant interference with or an unreasonable disturbance to another occupant or the Landlord. I also do not find that this one complaint is sufficient to prove that the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant. I find the Landlord has not proven cause to end this tenancy under sections 47(1)(d)(i) or (ii) of the Act.

Residential Tenancy Policy Guideline #8-Unconscionable and Material Terms deals with material terms of tenancy agreements. It states that 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. I must assess the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. To end a tenancy agreement for breach of a material term the Landlord 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.

The Landlord submitted a warning letter to the Tenant dated April 20, 2023. The Landlord did not tell the Tenant that they had breached a material term of their tenancy agreement. The Landlord's verbal evidence was that the Tenant breached section 14 of their tenancy agreement, but they did not provide testimony of how this section is a material term of the tenancy agreement. The warning letter states that a unit entry inspection will happen on April 28, 2023, but the Landlord did not provide follow-up from this alleged inspection. Finally, the warning letter stated that "no further notice will be sent regarding the same matter." I find then the problem was fixed as no further notice would be sent.

Based on the testimonies and evidence of the parties and on a balance of probabilities, I find the Landlord has not proven cause to end this tenancy under section 47(1)(h) of the Act.

As the Landlord has not proven cause to end this tenancy, I cancel the Landlord's One Month Notice as I do not find cause to uphold it. The Tenant's application to dismiss the One Month Notice is granted and the tenancy will continue until ended in accordance with the Act.

The Tenant did not provide any evidence on their claim for an order for the Landlord to comply with the Act, regulation, or tenancy agreement. I dismiss this claim with leave to re-apply.

As the Landlord was unsuccessful in their claim, they must bear the cost of their application filing fee.

Dated: October 18, 2023