



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two of the Tenant's applications pursuant to the *Residential Tenancy Act* (Act) for:

- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act,
- Compensation of \$5000.00 for monetary loss or other money owed,
- The Landlord to allow access to the unit,
- The Landlord to provide services or facilities required by the tenancy agreement,
- To suspend or set conditions on the Landlord's right to enter the rental unit,
- Authorization to change the locks to the rental unit,
- The Landlord to comply with the Act, regulation or the tenancy agreement,
- Reimbursement of the filing fee.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties confirmed service of the Proceeding Packages and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Preliminary Matters

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated several matters of dispute on the application, and the hearing focused on the primary issue before me, the Tenant's request for cancellation of the Landlord's One Month Notice under section 47 of the Act. I dismiss the other claims with leave to reapply.

Issue(s) to be Decided

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

Is the Tenant entitled to recover the filing fee for their applications from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The rental unit is a ground level self contained bachelor suite that is part of a house (the House). The Landlord and their family reside on the upstairs level of the House. Other tenants occupy three separate suites in the basement of the House.

Evidence was provided showing that this tenancy began on May 1, 2023, with a monthly rent of \$750.00 due on the first day of each month. The Tenant paid a security deposit of \$375.00 which the Landlord continues to hold in trust.

On August 25, 2023, the Landlord served, by attaching a copy to the Tenant's door and by placing a copy in the Tenant's mailbox, the One Month Notice with an effective date of September 30, 2023. The One Month Notice indicates the following reasons to end the tenancy:

- The Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord.
- The Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
- The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.
- The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the Landlord.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause listed on the One Month Notice state:

- The Landlord feels they and their family are being harassed and that their personal privacy and quiet enjoyment are being violated. Other tenants feel scared and annoyed with the presence of police officers and their quiet enjoyment is violated.
- The Landlord detailed 6 occurrences of police attendance, from August 1, 2023 to August 22, 2023.

At the outset of the hearing, the Landlord clarified that the primary reason for the One Month Notice is the following:

- The Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlord testified that the Tenant is constantly video recording them, their family and other tenants of the residential property, as the individuals carry on with their comings and goings and daily activities. The Landlord stated that the Tenant called the police on six separate occasions, which is a significant disturbance to others. The Landlord testified that the most significant of these incidents occurred on October 16, 2023, at which time the Tenant falsely reported gunshot noise to the police. This resulted in police attendance that was of disturbance to all residents of the residential property and the neighbours.

The Landlord filed letters from their neighbour and other tenants as part of their documentary evidence. The letter from the basement tenants is dated August 23, 2023. The tenants indicate that they have lost their quiet enjoyment and privacy since the Tenant moved into the rental unit. They indicated they are unaware of the issues between the parties.

The letter filed from the neighbours is dated October 29, 2023. They indicated that they did not hear any gunshots on October 16, 2023. They stated that many police officers attended the area after receiving a phone call from a resident of the House.

The Landlord filed a letter from tenant RW, who has been a tenant at the House for two years. RW indicated that the peaceful and quiet environment shifted once the Tenant moved into the rental unit, specifically due to the Tenant's actions of filming any or all interactions on the property and making repeated calls to the police regarding non-emergency matters.

RW attended the hearing and testified that they returned home from work and were engaged in a conversation with the Landlord, at which time the Tenant approached them out of nowhere and started filming their interaction. RW stated that they felt

uncomfortable and left the area as they did not want to be recorded. RW testified that there were several incidents of police attendance during the summer of 2023. RW stated that on October 16, 2023, the police questioned them about weapons being fired in the area. RW stated that the police assured them that all is fine, and they will not be investigating the matter further.

The Tenant testified that the Landlord has intimidated and harassed them since the start of the tenancy. The Tenant stated that they felt unsafe and called the police. The Tenant testified that at the start of the tenancy the Landlord sent them a friend request on Facebook, and then soon engaged in stalker like behaviour. The Tenant testified that the Landlord hovered over their rental unit, constantly asked questions about their whereabouts and would often attend unannounced at the rental unit. The Tenant stated that the Landlord would sit in front of the door to their rental unit. The Tenant filed an audio recording of the Landlord knocking on their door and numerous photographs of the Landlord sitting in front of their door as part of their documentary evidence. The Tenant stated they recorded the Landlord given the above noted actions and behaviours of the Landlord.

The Tenant testified that they called the police on October 16, 2023 as they had concerns about gunshots being fired.

The Tenant testified that one of the tenants (tenant P) who signed the letter provided by the Landlord asked her out on two occasions and is lying in this situation. The Tenant stated that this individual has violated their quiet enjoyment by inappropriately asking them out and and doing laundry on their day of laundry. The Tenant filed an audio recording and text message communication from this tenant as part of their documentary evidence. Tenant P communicated that they signed the letter, but really have no complaints or issues.

The Tenant testified that the Landlord has placed cameras on the premises and inside the unit. The Tenant stated that they invested in a camera detector, but do not have proof of any cameras inside the rental unit. The Landlord testified that they did not install any cameras inside the rental unit.

The Tenant stated that on August 7, 2023 they filed for dispute resolution, and the Landlord retaliated by serving the One Month Notice of August 25, 2023.

Analysis

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

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenant disputed this notice on August 28, 2023, and as the One Month Notice was served to the Tenant on August 25, 2023, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

I find the Tenant's evidence raises doubt with respect to the credibility of the Landlord's documentary evidence. The Landlord provided one letter that is signed by all basement tenants. Tenant P admitted they signed the letter and have no issues or complaints to report. The Tenant's documentary evidence proves Tenant P's position on the matter. Based on the above, I do not accept the letter to be a true and accurate statement.

I accept witness RW's testimony that there have been considerable disturbances resulting from police attendance. I find the Landlord did not substantiate that the Tenant was making false requests for emergency services. Instead, I find the Tenant's documentary evidence shows an ongoing dispute between the parties, and I accept the Tenant's testimony that they called the police on these occasions.

Although there is witness testimony of one incident where the Tenant video recorded an interaction, I find this alone does not prove sufficient grounds to end the tenancy.

I find the Landlord did not provide sufficient evidence to prove the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord, seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property or engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the Landlord.

Section 47 of the Act states a landlord may end tenancy if the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

To provide guidance on Unconscionable and Material Terms, Policy Guideline 8 states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – 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.

I find the Landlord did not prove that they made the Tenant aware of any violations. I find the Landlord did not issue a written demand for the Tenant to rectify the noted problems by a deadline provided in a written letter. Further, I find the Tenant was not provided with a reasonable opportunity and timeframe to rectify the problems noted by the Landlord.

Therefore, the Tenants' application is granted for cancellation of the Landlord's One Month Notice under section 47 of the Act.

The One Month Notice of August 25, 2023 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Is the Tenant entitled to recover the filing fee for their applications from the Landlord?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act. Per section 72(2) of the Act, the Tenant may deduct this amount from one future month's rent in full satisfaction of the recovery of the cost of the filing fee. Such a deduction is not grounds for the Landlord to issue a notice to end tenancy for non-payment of rent, as a tenant is entitled to withhold rent when authorized by an arbitrator.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's One Month Notice under section 47 of the Act.

The One Month Notice of August 25, 2023 is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

I authorize the Tenant to deduct \$100.00 from one future month's rent in full satisfaction of the recovery of the cost of the filing fee.

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: December 6, 2023

Residential Tenancy Branch