



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, RP, FFT / OPC-DR, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the Act). The landlord's application for:

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

And the tenant's application for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- the cancellation of the One Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by an agent (LP).

Both parties confirmed that they had received the others documentary evidence and notice of dispute resolution proceeding packages. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee.

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) an order to the landlord to make repairs to the rental unit; and
- 3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting May 1, 2023 and ending April 30, 2024. Monthly rent is \$1,650 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$800, which the landlord continues to hold in trust for the tenant.

The tenancy agreement included the following clause:

13. ADDITIONAL OCCUPANTS. No person, other than those listed in clause two above, may occupy the rental unit. A person not listed in clause two who resides in the rental unit for a period in excess of two weeks in any calendar year will be considered to be occupying the rental in a contrary to this tenancy agreement and without right or permission of the landlord. This person will be considered a trespasser. A tenant anticipating an additional person to occupy the rental unit must promptly apply in writing for permission from the landlord for such permission to become an approved occupant. Failure to apply and obtain the necessary approval of the landlord in writing for permission from the landlord for such permission to become an approved occupant. Failure to apply and obtain the necessary approval of the landlord in writing is a breach of a material term of this agreement. The landlord may at his option give notice to the tenant to immediately correct the breach. If the tenant fails to correct the breach within a reasonable time after having been given written notice by the landlord, the landlord has the right to end the tenancy.

(the Additional Occupants Clause)

The tenancy agreement only lists the tenant as an approved document at clause 2.

On July 17, 2023, the tenant applied for her daughter to be added to the tenancy. The landlord conducted a review of her application, and found that she did not meet the landlord's "threshold metrics" for tenants. It stated the reasons she failed to qualify in email dated July 19, 2023 to the tenant's daughter. It stated:

Unfortunately you do not qualify to be a tenant. The reason for this is that you would need to qualify on your own, as does each possible tenant that applies. AN example if your co-tenant chose to move out and do a one tenant vacate, you do not meet the threshold to be approved.

We require a min C+ credit score approx. 608, proof of ability to pay as well as steady income and/ or proof of savings and payment of debts in good standing.

You were not approved for the following reasons:

1. Your credit is a F 488
2. You have over \$16k debts
 - a. This is also with 3 files (R9) in collections (written off Bad debt)
3. You have new employment of approximately 3 months with no verified proof of amount of income/ nor proof of savings.

Based on these findings unfortunately you do not meet our requirements.

LP testified that the tenant met this threshold when she herself applied.

Despite this rejection, the tenant's daughter and two young children moved into the rental unit.

LP testified that shortly thereafter, the landlord began receiving noise complaints about the tenant and her daughter. She investigated the complaints and discovered that the tenant's daughter had moved.

On August 15, 2023, the landlord sent a letter to the tenant advising her that they considered her daughter's presence in the rental unit to be a material breach of the tenancy agreement and asked that her daughter and children vacate the rental unit by August 21, 2023. The letter cautioned the tenant that failure to do so will result in her being issued a one month notice to end tenancy for cause.

Additionally, the letter set out the noise complaints made against the tenant and demanded that the tenant ensure that she and her guests do not disturb the other occupants of the residential property any further.

LP testified that the tenant responded to the letter that same day and stated that her daughter would not be moving out. As such, LP testified that the landlord issued the Notice the following day. It specified an effective date of September 30, 2023, and listed

the reason for ending the tenancy as a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The tenant confirmed that she received the Notice on August 16. She disputed it 10 days later.

The Notice provided the details of the cause as:

On August 15, 2023 the tenant was issued a letter with regards to the contravention of their tenancy agreement with regards to unauthorized tenants/occupants residing in their suite, as well as noise complaints (see attached).

The tenant was given until August 21, 2023 to have the unauthorized tenants vacate the suite or a 1 month notice to end tenancy for cause would be issued. The tenant responded via text on August 15, 2023 that the unauthorized tenants/occupants would not be vacating and to issue the notice.

The parties made lengthy submissions on the noise complaints. The tenant alleged that other occupants were targeting her and her family for racially motivated reasons. However, for the reasons set out below, it is not necessary for me to elaborate on the specifics of these complaints.

The tenant testified that prior to entering into the tenancy agreement, she indicated to the landlord's agent that she intended to move her daughter and grandchildren into the rental unit at some point, or failing that, a friend of hers. She stated that the landlord's agent did not indicate that this would be a problem.

The tenant testified that her daughter is a victim of domestic violence and prior to moving into the rental unit was living in a transition house. She asserted that it was her right as a parent and grandparent to give shelter to her daughter fleeing domestic violence and to her grandchildren. She stated that she believed the real motivation behind the eviction was that certain long-term occupants of the residential property did not approve of her, her daughter, and her grandchildren from residing at the residential property because they are Métis.

Furthermore, the tenant asserted that her daughter was employed at the time she applied to become a tenant, and earned more than the tenant does. As such, she argued that her daughter should have been approved to live in the rental unit.

As of the date of the hearing, the tenant's daughter and grandchildren continue to reside in the rental unit.

Analysis

Based on the evidence presented, I find that the tenant was served with the Notice on August 16, 2023 and that she disputed it within the statutory mandated time of 10 days.

Section 47(1)(h) of the Act allows a landlord to end a tenancy if a tenancy has failed to comply with a material term of the tenancy agreement and if the tenant has not corrected the situation within a reasonable timer after the landlord has given written notice to do so.

Based on its language, I find that the Additional Occupants Clause is a material term of the tenancy agreement. It sets out a process that the tenant must comply with in order for another occupant to be permitted. I accept the landlord's evidence that they applied this process to the tenant's daughter, and that she did not pass. The tenant did not dispute the basis for her daughter failing the screening process (that she had a poor credit rating, significant personal debt, and a new job), rather the tenant argued that the daughter should have been screened in on other criteria.

The landlord is entitled to set up criteria to screen potential tenants and occupants. The criteria in place do not appear to be unreasonable. Based on the evidence before me, I find that tenant's daughters failed to meet the criteria. As such, I do not find that the landlord unreasonably withheld its consent to allow the tenant's daughter to move in.

I do not find that the landlord's agent's lack of objection to the tenant telling him that her daughter might move into the rental unit means that the landlord implicitly consented to it being allowed. I understand it to mean that this would not be prohibited. The tenancy agreement provided a mechanism for this to occur, and the tenant was aware (or ought reasonably to have been aware) of the mechanism (stated in the Additional Occupants Clause) at the time she entered into the tenancy agreement.

Contrary to the tenant's assertion, she does not have an unrestricted right to allow her daughter and grandchildren to move into the rental unit with her permanently. Her relationship with the landlord is a contractual one, and both parties are bound by its terms. The tenancy agreement clearly sets out the policy about additional occupants, and the tenant must abide by those conditions. She did not. The Act does not provide any exception to such a policy for the reasons given by the tenant.

As such, I find that the tenant breached a material term of tenancy agreement. I find that the landlord gave her a written warning, and provided a deadline by which the breach must be remedied. I find that the only reason the landlord served the tenant with the Notice before this deadline was because the tenant indicated on the day she received the Notice that her daughter would not be moving out.

Accordingly, I find that the landlord has satisfied both requirements of section 47(1)(h), and that it issued the Notice for a valid reason. I have reviewed the Notice and find that it complies with the section 52 form and content requirements. I dismiss the tenant's application to cancel the Notice.

Per section 55 of the Act, I grant the landlord an order of possession. In light of the time of year and that two young children reside in the rental unit, I find it appropriate to allow the tenant and her family additional time before this order is effective. Per Residential Tenancy Branch Policy Guideline 53, the general time frame for an order of possession to be effective is two days after the order is received. However, in the circumstances, I find it appropriate to fix the effective date of the order at December 31, 2023 at 1:00 pm.

As tenant has been unsuccessful in her application, I decline to order that the landlord reimburse her the filing fee. As the landlord has been successful in its application, I order that the tenant repay the landlord its filing fee. Per section 72(2) of the Act, the landlord may deduct \$100 from the tenant's security deposit in satisfaction of this amount.

As I have ordered that the tenancy is ending, the issue of the outstanding repairs is moot. I dismiss this portion of the tenant's application, without leave to reapply.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by December 11, 2023 at 1:00 pm.

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 11, 2023