



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Tenant filed an Application for Dispute Resolution on September 19, 2023 to dispute the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) served to them by their Landlord.

The Landlord filed their Application for Dispute Resolution on October 24, 2023 seeking an order of possession of the rental unit in line with the same One-Month Notice.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 28, 2023. In the conference call hearing, I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. At the start of the hearing, each party confirmed they received the other’s Notice of Dispute Resolution Proceeding, and the other party’s evidence, in advance of the scheduled hearing as required.

Issues to be Decided

- Is the One-Month Notice valid?
- If the One-Month Notice is valid, is the Landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

A copy of the tenancy agreement in place between the Landlord and the Tenant shows that the agreement started on June 1, 2023. The agreement shows the rent amount of \$1,350 per month.

Both parties provided a copy of the One-Month Notice, signed by the Landlord on September 15, 2023. This gave the final end-of-tenancy date as October 31, 2023.

On page 2 of the document the Landlord indicated the following reasons:

- Tenant has significantly interfered with/unreasonably disturbed another occupant/landlord
- Tenant has seriously jeopardized the health/safety/lawful right of another occupant/landlord
- Tenant has engaged in illegal activity that has/likely to adversely affect the quiet enjoyment/security/safety/physical well-being of another occupant/landlord
- Tenant has engaged in illegal activity that has/likely to adversely jeopardize a lawful right/interest of another occupant/landlord

The Landlord provided details on page 2:

The tenant broke in and entered another person's apartment in the building without being authorized enter the unit. [The Tenant] was aware of the other tenants absence so took it upon [themselves] to enter the other tenants suite, which is illegal trespassing and considered "breaking and entering".

The Landlord's evidence, in email dialogue, shows the Tenant notified the Landlord of their entry into the other unit on September 13, 2023. The message from the Tenant to the Landlord sets out that they knocked on the door of the neighbouring unit, the door was unlocked with no answer. The Tenant set out that they took a picture of the interior of the unit from the doorway, and they requested that the Landlord ensure the neighbouring unit was locked.

The Landlord responded approximately 2 hours later to state that "It is illegal to open another person's door and look into their apartment as this is trespassing and grounds to evict you." To this, the Tenant responded that they did not enter, then stayed in the hallway, and then left.

In the Landlord's materials, there was reference to other building residents' complaints about the Tenant. The Landlord did not provide detail on this point in the hearing. As well, the Landlord described hearing about the incident (in addition to the Tenant disclosing this on their own) from two witnesses who observed the Tenant enter into the neighbouring unit. The Landlord stated they were told that the Tenant "entered a few steps into the [neighbouring unit] hallway".

The Tenant described approaching the neighbouring unit on September 13 in order to follow-up on banging and other noise they heard from that neighbouring unit. They stated that the door just opened when they knocked on it to inquire if anyone was present. They sent a message to the Landlord to see if the Landlord needed to ensure that the neighbouring unit was locked in that resident's absence. They were just wanting the resident in that neighbouring unit to quiet down, then this turned into a query to the Landlord about the door being unlocked/open. As stated by the Tenant in the hearing, they had no reason to enter the unit, and the door was ajar.

The picture taken by the Tenant from the entryway of the neighbouring unit appears in the Landlord's evidence.

Analysis

The *Act* s. 47 sets out the reasons for which a landlord may give a One-Month Notice. This includes the reasons indicated on the One-Month Notice that the Landlord served to the Tenant.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. I find the Landlord did not provide sufficient evidence in this matter to support each of the grounds they indicated on the second page of the One-Month Notice.

For one, I find there was no interference/disturbance to another occupant, when that particular information was not specified in the Landlord's documentation or testimony. The occupant in the neighbouring unit was not present; therefore, I find the Tenant's action does not constitute significant interference or unreasonable disturbance.

Similarly, I find that there was no jeopardy to another occupant's health or safety, or other lawful right. I find there was not a significant breach of the other resident's right to privacy.

The Landlord used the term "break and enter" to the Tenant which I find is not strictly accurate. There was no evidence of a forced entry by the Tenant. The Landlord also described the matter as "trespassing". The Landlord made no reference to calling police on this incident; therefore, I find the incident cannot be deemed illegal by the Landlord when they did not pursue the matter as such. I find the designated term "illegal" can only apply when that is proven or investigated as such by the proper authorities.

The Landlord also did not provide sufficient detail on other witnesses who they stated observed the Tenant enter into the rental unit. There was no description of the witnesses, or when they made a description of the incident in question to the Landlord.

I accept that the Tenant overstepped their boundaries and looked into the neighbouring unit. I find that does not constitute legal grounds to end the tenancy where the impact of the action is not present in the Landlord's evidence. That is to say, I find there was no disturbance or interference. I find the Tenant's act was innocuous, as borne out by the fact that they on their own notified the Landlord of what they did, with no deception. If the Landlord is alluding to the impact on their own time and effort to effect the end to this tenancy, they did not describe it as such in the hearing.

In these circumstances, I find a warning to the Tenant from the Landlord is more appropriate. There is no record of other repeat instances. I caution the Tenant that, in no uncertain terms, they must respect other occupants' and the Landlord's boundaries at all times and in all instances in the rental unit property. The Tenant does not get a pass for any reason to do with their own frustration in the Landlord's handling of the Tenant's complaints of odour or other noise from their neighbours.

Conclusion

For the reasons outlined above, I order the One-Month Notice issued on September 17, 2023 is cancelled and the tenancy remains in full force and effect. I dismiss the Landlord's Application for an Order of Possession for this reason.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 29, 2023

Residential Tenancy Branch