

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

This hearing dealt with the Landlord's Application for Dispute Resolution under the Act for:

- an order of possession pursuant to the of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice).

Preliminary Matters

In the course of the hearing, the Tenant identified the dispute of a 10 Day Notice as having been made in error. No 10 Day Notice was in issue.

The initial hearing was adjourned due to the conference call being disconnected. The continuation of the hearing began via Conference Call at 1:30 PM, with the KF attending for the Landlord. The Tenant did not attend although the conference call was left open for the duration of the hearing, approximately 12 minutes.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Should the Tenant be granted an extension of time to dispute the One Month Notice?

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 an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

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.

Evidence was provided showing that this tenancy began on March 1, 2011, with a current monthly rent of \$1,378.00, due on the first of each month.

KF testified that the Tenants' rental unit is cluttered to a degree that it is unsafe for herself and her son. He testified that he believes the rental unit has been significantly damaged and estimated a cost of \$30,000 to \$80,000 to restore the unit to an acceptable standard.

KF testified that an annual inspection was made in early 2023. The principal concerns identified during that inspection were the presence of hundreds or thousands of small mirrors covering the walls; a large bale of cardboard; the general difficulty of moving about the rental unit; and that the lock or keys to the front door had been changed.

The Landlord wrote a letter requiring the Tenant to make changes to the rental unit to address the concerns.

KF testified that when he conducted a second inspection, on August 28th, 2023, matters hadn't improved. The bale of cardboard had been removed. However, KF testified that the back yard could not be accessed, because the back door was blocked by a variety of materials. On the whole, KF testified that the clutter and materials represented a fire hazard. Some of the mirrored tiles on the wall had come off and there were shards of glass on the floor.

KF testified that the walkway to the front door was quite narrow. KF testified that he could not see the flooring in most areas, and that he assumed the flooring will have to be replaced. KF also testified that he was unable to access the kitchen or bathroom due to clutter in the rental unit. Although KF testified that pictures of the unit had been taken, he did not provide them in evidence.

KF testified that the Landlord issued a One Month Notice for Cause on September 14th, 2023, and sent it to the Tenant by registered mail. As the notice was returned as undelivered, the Landlord posted the Notice to the Tenant's door on or about November 6th, 2023.

RR testified that she is a single mother who homeschools her son in the rental unit, and that the rental unit is purposefully arranged to accommodate homeschooling. She also testified that she suffers from fibromyalgia.

RR characterised herself and her son as homebodies and admitted that the rental unit gets messy and requires cleaning.

RR testified that the kitchen and bathroom are not blocked, that she is able to use the bathroom and kitchen, and that she cooks three meals a day in the kitchen.

RR testified that, at the time of the spring 2023 inspection, she was not prepared for the inspection. She stated that she had 10-14 boxes in a stack, and that these boxes were removed at the request of the Landlord.

RR testified that the mirrored tiles are attached to the walls by tacks.

RR provided 14 pictures of the rental unit in evidence.

RR testified that she did not receive the One Month Notice by registered mail. She testified that she believed she had notices for packages at that time, and she may have overlooked the notice for registered mail. She testified that her fibromyalgia may have contributed to such oversight, as fibromyalgia negatively affects her ability to concentrate and attention to detail.

KF testified that the pictures of the rental unit provided by the Tenant do not represent what he observed and argued that they were pictures from earlier in the tenancy.

Analysis

Should the Tenant be granted an extension of time to dispute the One Month Notice?

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. Section 47 of the Act states that 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.

The Tenant has applied for additional time to dispute the notice. The One Month Notice was mailed by registered mail to the Tenant, and then later posted to her door. If the Notice was served by registered mail, I have no discretion to extend the period to dispute the Notice to November 6th, 2023, as under section 66(3) of the Act, a time limit to dispute a notice may not be extended beyond the effective date of the Notice.

However, the Tenant did not receive the Notice by registered mail – the tracking information confirms this. Section 90 creates a rebuttable presumption that a notice is

received five days after mailing. Here, the tracking information confirms it was not received. If the failure to receive the Notice was not due to the Tenant's negligence or evasion of service, the presumption is rebutted.

The Tenant testified that the Notice was not picked up due to inadvertence. She could not say whether a pick-up notice was placed in her mailbox; if so, she testified that she likely missed it among other notices and mail. She also testified to her fibromyalgia, stating that it at times makes it difficult to concentrate and pay attention to detail. This goes some way to rebut the suspicion of negligence. On balance, I accept the Tenant's testimony and I am satisfied that the Tenant did not fail to pick up the registered mail package due to negligence or evasion of service.

The prompt manner in which the Tenant disputed the Notice after it was posted to her door provides me some further confidence that the Tenant was not simply avoiding dealing with the ongoing dispute with her Landlord. I therefore find that the Tenant has rebutted the presumption of service under section 90 of the Act and was not served by registered mail, but rather by the Notice being posted to her door on November 6th, 2023.

As a result, the Tenant's application for additional time to dispute the notice is unnecessary.

As the Tenant disputed this notice on November 6th, 2023, and since I have found that the One Month Notice was served to the Tenant on the same day, 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.

The accounts of the Tenant and the Landlord of the condition of the rental unit vary significantly. The Landlord describes a living space so overloaded with clutter that it is difficult or impossible to access the kitchen, the bathroom and the back door; the Tenant describes a full but functional living space.

Here, the Landlord bears the burden of proof. The Tenant provided some pictures of the rental unit, which show, in my view, a crowded but not dangerous living space. The Landlord has not provided contrary documentary evidence. KF testified to his belief that the condition of the rental unit constitutes a fire hazard, and that there has been extraordinary damage to the rental unit. However, there is no report or assessment by a fire inspector. In respect of the damage to the rental unit, the damage to the floors appears to be speculative, based on the observation of the material covering the floor. I find that the Landlord has not provided sufficient evidence to support this inference.

While I am concerned that the Tenant is not maintaining the rental unit in a safe condition, considering the whole of the foregoing, the Landlord has not met its burden of proving sufficient grounds to uphold the One Month Notice.

Therefore, the Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of September 14th, 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 an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

The Tenant did not make a specific request under this basis, or provide submissions sufficient to support any order under this heading.

The Tenant's application for an order that the Landlord comply with the Act, regulation or tenancy agreement is therefore dismissed, without leave to reapply.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of September 14th, 2023 is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Landlord's application for an Order of Possession based on the One Month Notice to End Tenancy for Cause under section 55 of the Act is dismissed, without leave to reapply.

The Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 14, 2024

Residential Tenancy Branch