

DECISION

Introduction

This review hearing was conducted in response to the Tenant's application for a review consideration of a dispute resolution decision issued on May 13, 2024.

The Tenant did not attend the original hearing of this matter on May 9, 2024. In my review decision dated May 17, 2024, I found the Tenant was prevented from attending due to circumstances beyond their control.

Both parties attended this review hearing and had full opportunities to present evidence and testimony. My review decision below replaces my previous decision in this matter.

Issues to be Decided

Should the May 13, 2024, order of possession be set aside under section 82(3) of the Act?

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

Is the Tenant entitled to change the locks of the rental unit?

Facts and Analysis

In the May 13, 2024, decision I awarded the Landlord an order of possession based on the One Month Notice issued February 13, 2024, for repeated late rent payments and unreasonable disturbance of other occupants and seriously jeopardizing the health or safety of other occupants.

Should the May 13, 2024, order of possession be set aside under section 82(3) of the Act?

The May 13, 2024, order of possession was based on the Landlord's undisputed testimony of the reasons for ending the tenancy.

I find the Tenant has provided evidence of an e-transfer receipt showing their roommate paid \$2,000.00 to the head tenant on October 3, 2023, which the Tenant testifies

included the Tenant's portion of rent. As rent was due on October 4, 2023, on a balance of probabilities, I find the Tenant paid rent on time for October 2023.

The Tenant says they paid rent on time after receiving the One Month Notice. The Tenant says the Landlord sent them a letter saying rent was due by the 5th of the month. Following is a screenshot of a portion of a warning letter from the Landlord to the Tenant.

next month must be on time. Your monthly rent payment is on the 4th of each month. If I can't receive the monthly rent you pay on the 5th, I will write it:

10 Day Notice to End Tenancy

I find it likely the wording of this warning letter caused confusion about the day the rent was due.

I find the Landlord has only proven that two rent payments were late at the time the One Month Notice was issued on February 13, 2024. I find it is not necessary to determine whether rent was paid late after the notice was issued because I find there were not enough late rent payments to justify the notice at the time it was served.

The Tenant testified that they do not deliberately disturb or intimidate other occupants and they do not cause undue noise outside of quiet hours. The Tenant says they work late and when they come home, they watch TV while eating dinner. The Tenant says the noises they make are the normal sounds of daily life that the other occupants should expect to hear in a shared house.

The Tenant says the tenancy agreement does not include a no smoking clause. Their guests have occasionally smoked outside on the balcony, and they do not believe this is in breach of their tenancy.

The Tenant believes the Landlord wants to end their tenancy because the Tenant is opposed to the Landlord renting out a room in the residence that the Tenant believes was provided for the Tenants' use under the tenancy agreement.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Given the Tenant's characterization of events and their dispute of the Landlord's claims, I find the Landlord must provide documentary evidence to support their claims.

I note the Landlord has provided witness statements and copies of text message complaints from other occupants. However, I find the actions attributed to the Tenant

are not serious or significant enough to warrant and end to the tenancy. On a balance of probabilities, I find the Landlord has failed to establish cause to end the tenancy.

I hereby set aside my decision to grant an order of possession to the Landlord. Under section 82(3) of the Act, I cancel the One Month Notice.

The One Month Notice issued February 13, 2024, is cancelled and of no force. This tenancy continues until it is ended in accordance with the Act.

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

Section 70 of the Act states for an Arbitrator to suspend or set conditions on a landlord's right to enter the rental unit if they are satisfied that the landlord is likely to enter the rental unit in contravention of section 29 of the Act, which requires the landlord to give 24 hours written notice before entering the rental unit.

The Landlord disputes entering the Tenant's unit without notice. I find the Tenant did not present evidence of the Landlord or their agents entering the rental unit against the Tenant's wishes without providing any notice.

Therefore, I decline to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act. I dismiss this portion of the Tenant's application with leave to reapply.

Is the Tenant entitled to change the locks of the rental unit?

Under section 70 of the Act the arbitrator may authorize the tenant to change the locks, keys or other means that allow access to the rental unit and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant has failed to establish their claim to change the locks to the rental unit.

I dismiss this portion of the Tenant's application with leave to reapply.

Conclusion

Under section 82(3) of the Act, this decision varies and replaces the decision and order dated May 13, 2024.

I set aside the Order of Possession dated May 17, 2024.

I grant the Tenant's application to cancel the One Month Notice issued February 13, 2024, under section 47 of the Act.

The One Month Notice issued February 13, 2024, is cancelled and of no force. This tenancy continues until it is ended in accordance with the Act.

The remainder of the Tenant's application is dismissed, with 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: June 11, 2024

Residential Tenancy Branch