

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) under sections 46 and 55 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- an order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find the Landlord R.W. was served on June 10, 2024, by registered mail in accordance with section 89(1) of the Act and is deemed to have received the Proceeding Package on the fifth day after the registered mailing.

The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Preliminary Matters

The parties agree the Tenant made payment to cancel the 10 Day Notice issued June 4, 2024. Therefore, I find the 10 Day Notice has no effect under section 46 of the Act.

Under section 64(3)(c) of the Act, I amended the Tenant's application to withdraw this claim because it has been resolved.

Issues to be Decided

Does the One Month Notice end the tenancy?

Is the Tenant entitled to an order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act?

Facts and Analysis

Evidence was provided showing that this tenancy began on October 1, 2023, with a monthly rent of \$3,300.00, due on first day of the month, with a security deposit in the amount of \$1,650.00.

The co-tenant MD vacated the rental unit in January 2024 after providing written notice in December 2023. Thereafter the Tenant has resided in the unit on their own and paid rent to the Landlord.

The Landlord issued a One Month Notice on June 1, 2024, requiring the Tenant to vacate by July 6, 2024, for significant interference or unreasonable disturbance of the Landlord or another occupant. The details of the notice indicate the Tenant verbally assaulted a downstairs occupant on November 14, 2023; called the police to make a noise complaint about the downstairs occupants on November 24, 2023; and caused MD to vacate the premises in January 2024.

Does the One Month Notice end the tenancy?

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.

In accordance with sections 88 and 90 of the Act, I find that the One Month Notice was served on June 1, 2024, and is deemed to have been received by the Tenant on June 4, 2024, three days after it was attached to the Tenant's door.

I find the Tenant applied to dispute the notice on June 7, 2024, within ten days as required by the Act. Therefore, the Landlord bears the burden to prove that they have sufficient grounds to issue the One Month Notice.

The Landlord submitted a letter from MD indicating that they vacated the rental unit because the Tenant had an excess of possessions and was taking up two of the three bedrooms without paying extra rent to account for their proportionate use of the space. MD said the Tenant was hostile and aggressive when confronted. MD also says they had issues with the downstairs occupants and a rodent infestation.

I find the evidence and testimony from MD does not indicate behaviours by the Tenant that reach the high threshold of seriousness or significance contemplated by section 47 of the Act. The evidence from MD includes allegations that the Tenant threatened other acquaintances, however, I find these allegations are unsubstantiated. MD also lists other factors that contributed to their decision to vacate the rental unit. Therefore, I do not find the evidence from MD presents sufficient cause to end the tenancy.

The Landlord has provided a letter dated May 1, 2024, from the downstairs occupant's doctor, saying the downstairs occupant has suffered mental distress because of the Tenant making excessive noise, frequent complaints, and harassing their family.

The rental units are located in a residence built in 1910. It is not disputed that the building is not adequately sound proofed for noise. It is apparent that the Tenant has made numerous complaints about noise from downstairs, however, the Tenant feels they were justified. On a balance of probabilities, I find it is possible some of the Tenant's complaints are justified. The Landlord has not presented evidence to prove that the Tenant's noise complaints were so unreasonable or so frequent as to reach the level of seriousness required to end the tenancy.

Given the character of the building, noise transfer is to be expected. Each neighbor has noise complaints against the other. Since the Landlord has not provided evidence to substantiate that the Tenant is at fault for an excessive amount of noise over and above what could be expected in a building of this character, I find the Landlord has failed to establish excessive noise from the Tenant as a cause to end the tenancy.

Regarding the downstairs occupant's claim of harassment, if the incidents in November 2023 were significant, it is not clear why the Landlord did not issue a notice at that time, instead of agreeing to continue the tenancy after MD vacated the unit. I find the Landlord's six-month delay in issuing the One Month Notice weakens their claim that the Tenant's actions were serious or significant enough to warrant ending the tenancy.

The Tenant says the November 14, 2023, incident was a result of their neighbor downstairs interfering with the Tenant's laundry and the Tenant would not characterize the incident as a verbal assault. The Tenant testified that the downstairs neighbor banged on their door and made threats against them after the incident in the laundry room. I find the laundry incident is not sufficient to end the tenancy.

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 grant the Tenant's application to cancel the One Month Notice under section 47 of the Act. The One Month Notice of June 1, 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 allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act?

Under Policy Guideline 13 regarding co-tenants, a written notice from one co-tenant will end the tenancy for all tenants named on the agreement. I find the tenancy agreement including MD was ended by MD's written notice to end the tenancy.

Given the information presented at the hearing, on a balance of probabilities, I find the parties have established a new tenancy between the Tenant and the Landlord.

I find Tenant does not require an order under this part because the Tenant intends to remain in the rental unit and would not therefore sublet or assign their tenancy.

The Tenant may ask the Landlord's permission to allow them to have roommates or the parties may agree to enter into a new tenancy agreement with new co-tenants. However, the Landlord is not required to do so.

I dismiss this part of the Tenant's application, without leave to reapply.

Conclusion

I grant the Tenant's application to cancel the One Month Notice under section 47 of the Act.

The One Month Notice of June 1, 2024, is cancelled and of no force.

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

I dismiss the remainder of the Tenant's application, 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: July 26, 2024

Residential Tenancy Branch