



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, CNC, CNR, LRE, LAT, OPC, OPL, MNDC, ET, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated April 22, 2014, purporting to be effective May 30, 2014, to cancel a Two Month Notice to End Tenancy for Landlord's Use dated April 13, 2014 purporting to be effective on June 1, 2014, an order permitting the tenant to change the locks and an order limiting the landlord's access.

The hearing was also convened to hear an application by the landlord:

1. seeking to terminate the tenancy early without Notice under section 56 of the Act, and
2. making a claim against the tenant for monetary compensation.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matters

Amend Tenant's Application to cancel 10-Day Notice to End Tenancy for Unpaid Rent

The tenant testified that, in addition to the landlord's Two Month Notice to End Tenancy for Landlord's Use and the One Month Notice to End Tenancy for Cause, the landlord had also recently issued a 10-Day Notice to End Tenancy for Unpaid Rent and served this on the tenant.

No copy of the 10-Day Notice had been submitted into evidence as it was served on the tenant after the cross applications were made. However, due to the timing of this 3rd Notice, the tenant was permitted to amend their application to dispute the 10-Day Notice

along with their requests to cancel the Two Month Notice to End Tenancy for Landlord's Use and the One-Month Notice to End Tenancy for Cause.

Landlord's Monetary Claim

In addition to seeking an order to end the tenancy without Notice under section 56 of the Act, the landlord is claiming \$2,461.20 in monetary damages for cleaning, removal costs, loss of wages for preparing for arbitration, compensation for photocopying charges and travel costs.

I find that a monetary claim under section 67 of the Act with an application in conjunction with the request for an order of possession under section 56 of the Act warrant separate applications as they relate to distinctly different issues and remedies under the Act.

Moreover, I find that the landlord's monetary claims for cleaning and removal are premature as the tenant is still residing in the rental unit and none of the costs have yet been incurred. Accordingly, the monetary claims for cleaning and removal costs are dismissed with leave to reapply.

In regard to the claimed cost of preparing for the dispute resolution hearing, I find that the Act permits an applicant to be awarded the fee charged for the application. However, compensation for any other costs of making an application, including postage, photocopies, photos, travel and the time spent in preparing for the arbitration, are not expenditure claims that would be covered by the Act. Therefore these monetary claims are dismissed without leave to reapply.

For the reasons above, the landlord's monetary claims will not be heard and are dismissed with leave to reapply..

Two Month Notice to End Tenancy for Landlord's Use

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use that purports to be effective June 1, 2014. However, this tenancy is for a fixed term that does not end until September 30, 2014 and then continues as a month-to-month tenancy.

Section 49 allows a landlord to terminate a tenancy for landlord's use and a Notice under this section must end the tenancy on a date that is

- (a) not earlier than 2 months after the date the notice is received,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy. (My emphasis)

Given the above, I find that the landlord is not entitled to terminate this tenancy under section 49 of the Act through a Two Month Notice to End Tenancy for Landlord's Use until **after** the fixed term has expired and the tenancy has converted to a month-to-month tenancy.

Accordingly, I find that the Two Month Notice to End Tenancy for Landlord's Use must be cancelled without the need for any additional consideration in regard to the merit of the Notice nor the landlord's intentions for the use of the rental unit.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession ending the tenancy early?

Is the landlord entitled to monetary compensation?

Is the tenant entitled to an order cancelling the One Month Notice for Cause?

Is the tenant entitled to an order cancelling the 10-Day Notice to End Tenancy for Unpaid Rent?

Should the landlord's right to enter the unit be restricted?

Is an order justified permitting the tenant to change the locks?

Background and Evidence

The tenancy began on October 1, 2013 and is a one-year fixed term tenancy to end September 30, 2014.

Evidence was submitted including a copy of a One-Month Notice to End Tenancy for Cause dated April 22, 2014, a copy of the tenancy agreement, a copy of the Two Month Notice to End Tenancy for Landlord's Use dated April 13, 2014, copies of communications, copies of receipts, copies of estimates for cleaning, copies of move-in and move-out condition inspection reports and photos.

In regard to the landlord's application to terminate the tenancy early without Notice, the landlord testified that it is urgent that this tenancy be terminated immediately due to the tenant's conduct. The landlord testified that the early termination without Notice is justified under the Act because the tenant has repeatedly called police for no valid reason, brought a dog onto the property in violation of the tenancy agreement and also become physical by pushing others, interfering with access to shared areas and allegedly urinating on the laundry. The landlord stated that the tenant seems to be

mentally unfit to remain in the rental complex and asks for an Order of Possession without Notice under section 56 of the Act.

The tenant denied having a dog in the residence and stated that a guest had merely left the dog secured outside while visiting.

The tenant acknowledged calling police when she felt threatened by the landlord and others. According to the tenant, she suffers from an anxiety condition which has been worsened due to her treatment by the landlord. The tenant testified that intruders have interfered with her tenancy, including members of the landlord's family entering the rental unit at will, without her permission.

The tenant stated that the landlord has failed to prove that an emergency eviction is warranted in this case and the tenant believes that the landlord's application seeking to end the tenancy early should be dismissed.

The tenant also feels that the One Month Notice to End Tenancy for Cause has no merit and should be cancelled.

The landlord testified that they had issued and served the tenant with a One Month Notice to End Tenancy for Cause seeking to terminate the tenancy because the tenant was repeatedly late paying rent and because the tenant significantly interfered with or unreasonably disturbed other occupants and the landlord of the residential property, seriously jeopardized the health, safety or lawful rights of others, or put the landlord's property at significant risk. The Notice also indicated that the tenant has breached a material term of the tenancy and has not corrected the situation within a reasonable time after the landlord gave written notice to do so. In addition, the Notice stated that the tenant assigned the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent.

The landlord testified that the tenant paid the rent late, as evidenced by the dates on the 3 receipts submitted into evidence by the landlord and by the dates shown on the reverse of the cheques that these were deposited by the landlord.

The tenant testified that all of the cheques were properly dated for the 1st day of each month but the landlord chose to deposit the rent days later. The tenant testified that they were ready to pay on the dates that rent was due, but the rent was not collected on time by the landlord. The tenant pointed out that one of the receipts submitted by the landlord even confirms that the tenant paid the rent for December 2013 early, by paying it in advance on November 16, 2013.

Aside from the late payment of rent, the landlord testified that the tenancy should also be ended based on other causes listed in the 1-Month Notice. The landlord stated that

the tenant disturbed others by calling police for no valid reason, bringing a dog onto the property in violation of the tenancy agreement and engaging in inappropriate conduct such as pushing others, interfering with other resident's access to shared areas and allegedly urinating on the laundry. The landlord alleged that the tenant seems to be mentally unfit to remain in the rental complex.

The tenant testified that the landlord only issued the One Month Notice to End Tenancy for Cause in reprisal against the tenant for filing to dispute the landlord's Two Month Notice to End Tenancy for Landlord's Use. The tenant denies disturbing others. The tenant also objects to the landlord's accusation that the tenant had sublet her rental unit to another renter. The tenant stated that this never occurred.

Based on the above arguments, the tenant is requesting an order to cancel the One Month Notice to End Tenancy for Cause.

The tenant testified that, because the landlord has refused to accept rent payments, there is no justification for the landlord to issue a 10-Day Notice to End Tenancy for Unpaid Rent. The tenant requests that this 10-Day Notice be cancelled as well. The tenant stated that the tenant has always been ready to pay the rent each month and still is prepared to pay any outstanding rent owed.

The tenant's position is that the landlord is persecuting the tenant by seeking various ways to get rid of them and none of the Notices, including the 10-Day Notice to End Tenancy for Unpaid Rent, have any merit. The tenant testified that the landlord continues to devise tactics aimed at unfairly depriving the tenant of her home. The tenant seeks to have the 10-Day Notice to End Tenancy for Unpaid Rent cancelled .

The tenant testified that the landlord has been entering the rental unit and allowing others authorized by the landlord to do so. The tenant stated that the landlord has purposely removed the lock from the door separating her suite from the laundry room, thereby jeopardizing the tenant's privacy and has refused to put the lock back on. The tenant is requesting an order to allow the tenant to change the lock. The tenant stated that the landlord and others have been intruding by coming into the tenant's rental unit and using the facilities.

The landlord argued that the tenant is only renting a room and that part of the lower unit is to be used by others, including the bathroom and living room. The landlord submitted a copy of an undated advertisement advertising a room for rent with shared common areas. The landlord also submitted a handwritten drawing of the lower unit floor space in which the landlord has labelled the rooms as follows:

- "ROOM #1 (FOR USE BY RENTER ONLY),

- ROOM # 2 (FOR USE BY [LANDLORD] & HER FAMILY)”
- “SHARED BATHROOM”
- “SHARED KITCHEN”
- “SHARED LIVING ROOM”
- “SHARED HALLWAY”
- “SHARED HALLWAY & SHARED LAUNDRY”

The tenant stated that she had never seen the advertisement submitted by the landlord. The tenant disputed the landlord’s categorization of the rooms labeled as “shared”, and stated that, except for the laundry area, the lower floor plan was supposed to be part of her rental suite, not shared with others. The tenant pointed out that, after she moved in, the landlord suddenly informed the tenant that the rent was for a single room, not a suite and therefore all of the other rooms were “common areas”. The tenant testified that although she objected to this, the landlord ignored the tenant’s protests and proceeded to remove the lock and allow use of the tenant’s bathroom, 2nd bedroom and living room.

The parties both submitted a copy of a tenancy agreement signed on September 28, 2013, which states that the rental unit includes heat, furniture, stove and oven, dishwasher, refrigerator, carpets, window coverings free laundry, outdoor storage, garbage collection and under “*Additional Information*” states, “*shared yard*”. The tenancy addendum mentions a shared laundry. No mention is made in the contract of any other shared facilities, nor that the rental relates only to a room, not a whole suite.

The tenant is asking for an order prohibiting the landlord from using portions of her suite and from allowing others to freely access the rental unit without proper Notice.

Analysis:

Landlord’s Request to End Tenancy Early Without Notice

With respect to the portion of the landlord application requesting an Order of Possession to end the tenancy without Notice under section 56, I find that the landlord must first prove that:

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (i) significantly interfered with, or unreasonably disturbed, another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health, safety or a lawful right or interest of the landlord or another occupant;

- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that (A) caused or is likely to cause damage to the landlord's property, (B) adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or (C) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, and

AND the landlord must also prove that:

(b) **it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.**
(My emphasis).

In making an application for an early end to this tenancy, the landlord has the burden of proof to show just cause for ending the tenancy without notice.

Even if I totally accepted all of the landlord's testimony regarding the tenant's conduct as being a true and accurate account, the tenant's behavior as described would not be significant to meet the threshold warranting an immediate end to the tenancy without Notice.

For the reasons discussed above, I find that the landlord has not sufficiently met the burden of proof to establish that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect. Therefore I find that the landlord's application for an Order of Possession without Notice under section 56 of the Act must be dismissed.

Tenant's Request to Cancel One-Month Notice for Cause

In regard to the One-Month Notice to End Tenancy for Cause and, in particular, the allegation of repeated late payment of rent, I find that section 26 of the Act specifically requires that a tenant pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act. Nonpayment of rent is a valid basis upon which the landlord may end the tenancy for cause. The tenant should be aware that paying the rent late is a serious violation of both the Act and that the tenancy agreement and if the tenant fails to pay on time, it could result in termination of the tenancy under section 47.

However, I find the landlord has not sufficiently proven that the alleged late payments of rent occurred solely due to the tenant's failure to pay on time and did not result from a delay by the landlord in depositing the rent. I find the landlord's evidence only proved when the funds were deposited. I find records confirm that the tenant had even paid rent in advance on at least one occasion.

In regard to the other numerous reasons provided on the One Month Notice to End Tenancy, I find the landlord has not sufficiently met the burden of proof to establish that the tenant perpetrated any violations of the Act or agreement under dispute. Accordingly, I find that this One-Month Notice must be cancelled.

Tenant's Request to Cancel the Ten-Day Notice

In regard to the 10-Day Notice to End Tenancy for Unpaid Rent, I accept the tenant's testimony that the landlord refused payment of the rent before issuing the Ten Day Notice. Therefore, I find that the Ten Day Notice to End Tenancy for Unpaid Rent must be cancelled. I further find it necessary to order that the landlord accept payment of the rent.

Tenant's Request for Orders to Change Locks and Set Conditions on Landlord's Access

Section 25 of the Act places the responsibility for the cost of changing the locks at the beginning, or end of the tenancy on the landlord. Section 25(1) states that at the request of a tenant at the start of a new tenancy, the landlord must

- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

- (b) pay all costs associated with the changes under (a).

I find that the landlord is not entitled to lock the tenant out of any portion of the rental unit nor is the landlord entitled to remove locks securing the tenant's unit. I find that the landlord is required to ensure the tenant's security and privacy.

While not prepared to grant the tenant's request to change the locks, I do order the landlord to comply with the Act in regard to the tenant's security and access.

Based on the tenancy agreement signed between these two parties, I find that the tenant and the landlord entered into a rental agreement of a suite, and not just a bedroom with "*shared common areas*" as claimed by the landlord. I find that there is no indication in the tenancy agreement that limits the tenant's sole use of the rental space, with the exception of specifically stated terms indicating shared laundry and shared yard. Therefore, I find that the suite includes 2

bedrooms, a living room, bathroom, kitchen and a hallway, that are the exclusive possession of the tenant under the tenancy contract and the landlord is not entitled to usurp the tenant's quiet enjoyment of this suite or any portion thereof.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29.
- d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act states that a landlord must not enter a rental unit for any purpose unless the tenant gives permission at the time of the entry or at least 24 before the entry, the landlord gives the tenant written notice that includes the following information: (i) the purpose for entering, which must be reasonable; and (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees; or an emergency exists and the entry is necessary to protect life or property.

Section 29 (2) allows a landlord to inspect a rental unit monthly in accordance with the Act with proper written Notice as defined above.

Based on the Act as excerpted above, I find that the landlord must not enter the tenant's rental unit without proper Notice and only for purposes permitted under the Act. I hereby order the landlord to honour the agreement and the Act.

Based on the evidence before me I hereby dismiss the landlord's application in its entirety. I dismiss the landlord's request for an Order of Possession terminating the tenancy without Notice under section 56 of the Act, without leave to reapply. I dismiss the landlord's monetary claim with leave to reapply.

I grant the tenant's requests to cancel the multiple Notices to End Tenancy issued and served by the landlord. Accordingly, I hereby order that the landlord's Two Month Notice to End Tenancy for Landlord's Use, the One-Month Notice to End Tenancy for Cause and the Ten Day Notice to End Tenancy for Unpaid Rent are all permanently cancelled and of no force nor effect.

I order that the landlord accept the rent payments on time as offered and deposit the funds in a timely manner after issuing the tenant with a receipt.

I further order that the landlord restore the privacy and security of the tenant's rental unit by installing proper locks and also removing all inappropriate locks that limit the tenant's access to any portion of her rental unit.

Finally, I order that the landlord cease intruding on the tenant's right to quiet enjoyment of her suite. This includes both bedrooms, bathroom, kitchen, living room and hallway. I order that the landlord comply with the Act by providing proper written Notice to enter the rental unit for a valid purpose under the Act when this is genuinely necessary.

I find that the tenant entitled to be reimbursed the \$50.00 cost of cost of their application and may reduce the next month's rent by this amount as a one-time abatement.

Conclusion

The tenant is successful in the application and is granted orders cancelling the landlord's Two Month Notice to End Tenancy for Landlord's Use, One-Month Notice to End Tenancy for Cause and Ten Day Notice to End Tenancy for Unpaid Rent. The tenant is granted an order against the landlord requiring the landlord to comply with the tenancy agreement and sections 28 and 29 of the Act.

The landlord's cross application seeking to terminate the tenancy without Notice under section 56 of the Act is dismissed without leave and the landlord's claim for monetary compensation is dismissed with leave.

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: July 7, 2014

Residential Tenancy Branch

