Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF,

Introduction

This hearing was convened to deal with the tenant's application filed July 3, 2017 under the *Residential Tenancy Act* (the "Act") for an order cancelling a 1 Month Notice to End Tenancy for Cause dated June 30, 2017 (the "1 Month Notice") and for recovery of the application filing fee.

The tenant, the tenant's advocate, and the landlord attended the hearing. Both parties had full opportunity to present documentary evidence, to make submissions, and to respond to the submissions of the other party.

Service of the tenant's application and notice of hearing was not at issue.

An amendment to the original application dated August 20, 2017 was included in the tenant's materials. At the end of the hearing I advised the parties that I would not be considering the tenant's amendment because there was not adequate time in which to do so. Upon further review I have noted that the amendment was not filed. As the tenant has not filed her amendment, it could not have been considered even if there had been time to consider it. The tenant is at liberty to apply for the relief sought in the amendment at a later date. I make no findings on the merits of that application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to recover the application filing fee from the landlord?

Background and Evidence

The tenancy agreement and addendum were included in evidence. This tenancy began December 1, 2014. Monthly rent is currently $884.00 and is due on the first of the month. This is a month to month tenancy. A security deposit of $425.00 was paid at the beginning of the tenancy and remains with the landlord.

The 1 Month Notice was served on the tenant on June 30, 2017. It indicates that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord. It also indicates that the tenant has breached a material term of the tenancy agreement and failed to correct that breach within a reasonable time after written notice of same. In the "details" section the landlord has set out the chronology of events around the requested relocation of a fridge in the tenant's unit.

Landlord's submissions

The landlord testified that the rental property is a single family dwelling and that she resides in the upper suite and the tenant resides in the lower suite. The electrical panel for the upper suite is located in the lower suite. This was pointed out to the tenant when the suite was first shown to her. The addendum to the tenancy agreement provides that the "landlord will notify by phone if required to enter premise of access to electrical boxes for the home, should a need arise."

The landlord testified that on June 5, 2017 she required access to the electrical panel for her upper suite therefore asked the tenant to move the refrigerator that was covering that panel for access. On June 16 the landlord sent the tenant a second text about this. On June 23 the landlord sent the tenant a letter asking for the same thing. The landlord included a copy of that letter in her evidence. It includes this:

> Per my request of June 5 by text, I requested you move the fridge in your suit, as it blocks my electrical panel. This is in violation of my insurance policy, as well as being able to access my electrical services. This could pose a hazard. . . Please have this remedied by Monda, June 26, 2017 as I need to access the panel to fix a problem up stairs. [Reproduced as written]

On June 28 the landlord wrote another letter. That letter was also in evidence. It states that the tenant was asked on June 5 by text and on June 23 in writing to move the

fridge, and that the “issue has not been resolved.” It advises that “this is in violation of our tenant agreement of my accessing your suite to attend to any issues regarding the electrical systems, as I am unable to access the electric panel, as well as in violation of insurance standards. This poses a safety hazard.” The June 28 letter further states that the issue must be rectified immediately, and that if it is not, “further action will follow.” It also serves as notice that the landlord will be entering the suite within 24 hours to resolve the issue.

The landlord testified that the tenant was initially unresponsive to these requests and told her that she likes the fridge where it is. The landlord further stated that the fire department has advised her that she must be able to access the panel for safety reasons. On June 30 the landlord looked through the window and saw that the fridge had been moved.

The landlord’s second concern is the tenant’s entry into her unit through the landlord’s workspace. The landlord said that this puts her insurance at risk because the workspace has cords, machinery, and other safety hazards in it. A letter dated June 23, 2017 from the landlord to the tenant advising her to use the “assigned private entrance door . . . as designated at the time of your initial rental of this suite . . . ” was in evidence. In that letter the landlord acknowledges that she has permitted the tenant to use the door leading though her work area. The landlord also said that the tenant unplugs her equipment when she goes through the workshop.

Tenant’s response

The tenant’s advocate stated that the tenant was away between May 27 and June 16 and that the landlord knew this. Although the tenant was away, she responded to the landlord’s text requests (June 5 and June 16) with “sure” and “okay, that’s fine,” respectively. Copies of those text exchanges were in evidence.

The advocate argued that the tenant’s initial understanding was that the landlord would be relocating the fridge and that the tenant did not understand the landlord was asking that the tenant move it.

The tenant returned to her suite on June 16 and was immediately occupied with work. The tenant received the June 23 letter but was away June 25-27. She received the June 28 letter and moved the fridge by the 29. The tenant submitted a photo establishing this. The tenant had to call the fire inspector regarding where the fridge could safety be relocated before moving it.

The tenant's advocate submitted that the Code requires that electrical panels are in a common space, and that the addendum to allowing the landlord to enter the tenant's unit violates the tenant's right to quiet enjoyment. She also submitted that the Act requires the tenant to allow the landlord to access the suite under certain circumstances, but does not require the tenant to ensure that the unit is in compliance with applicable health and safety standards.

The tenant's advocate also stated that the landlord served the tenant with the 1 Month Notice on June 30, without first checking to see whether the fridge had been moved. Additionally, the refrigerator was covering the panel at issue when the tenancy began and the tenant did not choose its location.

Regarding the issue of the tenant's use of the workshop entrance, the advocate submitted that the workshop is located in an open carport, and that when the tenancy first began, the tenant used her own separate entrance, but subsequently asked the landlord to address the fact that the separate entrance was dark and often muddied. The landlord considered installing a light but, as that was costly, she instead invited the tenant to use the entrance through her workshop, and the tenant has been doing so for approximately two years. Recently, the tenant tripped on some debris, and raised her concern about the debris. In response, the landlord has asked the tenant to start using her own entrance again. The advocate also stated that the tenant has only once unplugged an extension cord as it was in her opinion posing a trip hazard.

Analysis

Section 47(1)(d)(i) and (ii) of the Act allow a landlord to end a tenancy for cause where the tenant has (i) significantly interfered with or unreasonably disturbed another occupant or the landlord, or (ii) has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Once a tenant disputes a notice, the burden of proof is on the landlord on a balance of probabilities to establish the cause alleged. This landlord's evidence here was not sufficient to convince me that the tenant has done either of s. 47(1)(d)(i) or (ii).

Although the landlord has stated that she has been significantly disturbed by the tenant and that her health or safety or other lawful rights have been jeopardized, she has not explained why or how this is the case. Her allegations are not consistent with the fact that the refrigerator has been covering the panel for the majority of the tenancy, or with

the fact that the landlord has allowed the tenant to use the carport entrance for approximately two years. Although there may be some safety implications around the landlord's recently raised concerns, I am not satisfied that they are sufficiently serious or threatening to warrant terminating the tenancy. I also note that the fridge has now been moved.

I find that the tenant consented to the landlord's entering into her unit and moving the fridge twice, on June 5 and on June 16, by text. At no point did the tenant unreasonably deny the landlord access to the rental unit.

Additionally, I find that the landlord is responsible for moving the refrigerator. Section 32(1) of the Act requires the landlord, not the tenant, to provide and maintain residential property in a state of repair that is compliant with health, safety, and housing standards required by law. If the location of the refrigerator was a safety risk or affected the landlord's insurance coverage, this is something for the landlord to address, not the tenant, and there is no indication she was not at liberty to enter the tenant's unit, with the tenant's consent or with appropriate notice.

Section 47(1)(h) of the Act allows a landlord to end a tenancy where the tenant has failed to correct a breach of a material term after written notice of the breach and a reasonable opportunity to correct it. I do not accept that the provision in the addendum stating that the landlord will notify the tenant by phone if access to the electrical panel is required is a material term of the tenancy agreement.

The landlord's right to enter the rental unit with notice is set out in the Act, as is her right to enter the unit without notice in the case of an emergency (s. 29). These rights may well be material terms of the tenancy. However, the landlord is not complaining that the tenant denied the landlord access to the unit. Rather, she is complaining that the tenant did not immediately move the fridge away from the panel herself.

Lastly, even if the tenant had breached a material term of the agreement, I find that the landlord failed to give the tenant written notice of the breach and a reasonable amount of time to correct it. There is no indication in any of the landlord's letters that breach of a material term is involved, and the landlord gave written notice of the concern on June 23 and again on June 28 and I find that the tenant moved the fridge by June 29.

In summary, the landlord has not established on a balance of probabilities that there is cause to end the tenancy under s. 47 of the Act. Accordingly, I cancel the landlord's 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The landlord's 1 Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

The tenant's amended application has not been filed and has not been considered.

As the tenant's application is successful, the tenant is entitled to recover the application filing fee. I authorize the tenant to withhold $100.00 from her monthly rent on a one-time basis in full satisfaction of this award.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 14, 2017

Residential Tenancy Branch