



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNC, FF

Introduction

In the first application the tenant applies to challenge a one month Notice to End Tenancy for cause dated September 23, 2017 and for a compliance order regarding the landlord's obligation to heat the premises.

In the second application the landlord applies for an order of possession pursuant to a one month Notice to End Tenancy purported to be dated September 26, 2017.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on balance of probabilities that the tenant has given good cause to be evicted? Does that evidence show she is entitled to a compliance order?

Background and Evidence

The rental unit is the main floor of a house. It is composed of three bedrooms. The landlord rents out each bedroom and the tenants share the rest of the floor. There is an

en-suite bathroom in one bedroom and a main bathroom for the other two tenants to share. All tenants share the common areas and a single kitchen.

The landlord's father lives in a basement suite in the lower part of the house.

This tenancy started in August 2015. The current monthly rent is \$440.00. The landlord holds a \$213.00 security deposit.

The Notice to End Tenancy alleges: 1) that the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or jeopardized a lawful right or interest of another occupant or the landlord, and that 2) the tenant has breached a material term of the tenancy agreement and failed to correct it within a reasonable time after being given written notice to do so.

The landlord testifies that he has received a number of complaints from the tenant's two current roommates Mr. M.W. and Mr. R.C. regarding the tenant's lack of co-operation in the sharing arrangement and regarding her loud and aggressive relationship with them.

He submits an undated, unsigned, typed statement purported to be from Mr. T.W. alleging emotional and verbal abuse, lack of respect and the tenant's unreasonableness, including her repeated harassment of him about leaving small particles of feces in the toilet bowl.

The landlord also submits an unsigned, typed statement purported to be from Mr. R.C. complaining about noise, hygiene, cleanliness, sanitation, and space, issues with the applicant tenant.

The statements paint the tenant as a demanding, loud, aggressive and uncooperative roommate.

The landlord shows that he has received complaints from the tenant's roommates and has cautioned her and warned her.

He submits an undated, unsigned statement purported to be from M., a prior roommate. In it M. describes similar conduct from the tenant while they shared the rental unit and says it was the reason he moved out.

In regard to the claim that the tenant has breached a material term of her tenancy, the landlord gives a list of three terms said to have been breached by the tenant: threatening behaviour, cleanliness and use of the shared freezer portion of the refrigerator.

The tenant denies the behaviour alleged and refers to incidents, particularly text messages with her co-tenants, showing her to be co-operative.

Analysis

Breach of a Material Term

Section 47(1)(h) of the *Residential Tenancy Act* (the “*Act*”) provides that a landlord may end a tenancy where the tenant (i) has failed to comply with a material term, and (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Residential Tenancy Policy Guideline 8, “Unconscionable and Material Terms” defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

The allegations here; that the tenant has shown threatening behavior, been noisy, does not maintain acceptable cleanliness and uses more than her fair share of freezer space, do not relate to terms in the tenancy agreement nor to any term imposed by the *Act*. They are behavioural matters. Even if it could be said that any related to a term in the tenancy agreement, each and all of the allegations are far from what might be considered breaches of any material term.

In the case of threatening behavior, serious threats of harm could clearly justify the ending of a tenancy because they would significantly interfered with or unreasonably disturbed another or seriously jeopardized the health or safety or a lawful right or interest of another. Either would be a ground for termination of a tenancy under s. 47(1)(d). But, it cannot be said that a mild threat of resulting consequences, for example “if you do that I’ll tell the landlord” a “trivial” matter would be a breach of a material term of the tenancy, causing it to end.

It is similar with the other alleged material term grounds. They do not form material terms of the tenancy agreement.

This ground for the Notice must fail.

Illegal Activity

Though the tenant's conduct alleged, if substantiated by the evidence presented, might have justified a finding that she was significantly interfering with or unreasonably disturbing her co-tenants, I find no evidence of any illegal activity.

The landlord suggests that the tenant has illegally recorded other tenants without their permission, however no such recording was referred to in evidence, nor was it shown that such a recording was illegal on its face.

This ground for the Notice must also fail.

The Landlord's Application for an Order of Possession

By an application made November 28 the landlord seeks an order of possession based on a one month Notice to End Tenancy said to have been posted on the tenant's door on September 26. No such Notice was filed as evidence in that application, as is required by the Rules of Procedure. A Notice to End Tenancy was filed as evidence by the landlord but it was dated October 23, 2017.

The landlord's application is dismissed.

The Tenant's Claim for a Compliance Order

At the start of the hearing it was revealed that the landlord had served the tenant with a two month Notice to End Tenancy for landlord use of property ending the tenancy on January 31, 2018. The tenant confirmed that she had received the Notice, had not applied to cancel it and intended to vacate the premises by the end of January.

In light of this disclosure any order requiring the landlord to fix or supply heat would, in my view, be of little value and so I dismiss that item of the tenant's claim.

It was suggested that as this tenancy is ending January 31, 2018, an order of possession be issued for that date, in order to cement the matter between the parties. They did not disagree and so the landlord will be provided with an order of possession accordingly.

Conclusion

The tenant's application to cancel the Notice is allowed. The tenant's application for a compliance order is redundant given that the tenant will soon end.

The landlord's application is dismissed.

As the tenant has been successful she is entitled to recover the \$100.00 filing fee. She will have a monetary order against the landlord in the amount of \$100.00.

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: December 21, 2017

Residential Tenancy Branch