Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Preliminary Matters

On May 11, 2018, a decision was reached regarding this application by another arbitrator appointed pursuant to the *Act*, in which the tenant's application was dismissed and an Order of Possession was issued in the landlord's favour.

On May 18, 2018, another arbitrator considered the tenant's review consideration application. In a review consideration decision of that date, that arbitrator suspended the original decision pending the outcome of another hearing of the original matter as that arbitrator was satisfied that the tenant was unable to attend the original hearing because of reasons that were beyond the tenant's control and were unanticipated. The tenant was advised of the outcome of the review consideration decision and was required to notify the landlord of the new hearing scheduled to be heard on June 14, 2018 at 9:30 a.m.. I was assigned responsibility for considering this reconvened hearing of the tenant's original application.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant did not connect with this hearing until twenty minutes after the scheduled time for this hearing. When the tenant connected, he explained that he had encountered difficulties connecting with the teleconference. The landlord and I encountered no such problems in connecting with the teleconference. As I had delayed proceeding with this hearing, only minimal testimony had been received from the

landlord by the time the tenant entered the teleconference. I took care to ensure that anything of substance that had been provided prior to the tenant's entry into the teleconference was re-entered as sworn testimony after the tenant joined the teleconference.

At the hearing, the landlord's spouse requested that three witnesses be called. In clarifying this request, I learned that one of the proposed witnesses was the original tenant NT who signed the only Residential Tenancy Agreement (the Agreement) that has been established for this tenancy. The landlord's spouse testified that NT, who co-habited with the Applicant who identified himself as the tenant in the current application and who was named as the tenant in the landlord's 1 Month Notice, has not resided in the rental unit since March 2016. As NT's knowledge of this tenancy would be almost two years prior to the landlord's issuance of the 1 Month Notice, I advised the parties that NT's testimony would be of little relevance to the situation as it existed at the time of the landlord's issuance of the 1 Month Notice. For that reason, I declined the landlord's request to call NT as a witness to these proceedings.

As the tenant confirmed that he received the 1 Month Notice on or about February 27, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenant sent him copies of the tenant's dispute resolution hearing package and the rescheduled Notice of Hearing for the reconvened hearing, I find that the landlord was duly served with these packages in accordance with section 89 of the *Act.*

Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*. However, the tenant testified that they had been unable to open an audio tape of a conversation, which the landlord said had been provided to the tenant on a CD. The tenant explained that his laptop had no slot for playing CDs, and as such the tenant was unaware of the contents of the CD. Since it is the responsibility of the provider of digital evidence to ensure that the recipient of that evidence has the capacity to access that evidence, I advised the parties that I could not consider that evidence. I made this determination in accordance with the Residential Tenancy Branch's (the RTB's) Rule of Procedure 3.10.5.

Near the end of the allotted time for this hearing, the landlord insisted that attempts be made to call the landlord's Witness KR. Despite the limited time available, Witness KR was called and provided sworn testimony that essentially repeated and confirmed the

written statement they had provided to the landlord and which were entered into written evidence by the landlord.

During the course of this hearing, both parties had difficulty following and adhering to requests that they limit their questions of one another and, in the case of the tenant, of the landlord's witnesses, to information actually presented by that person in either written or sworn testimony. These difficulties and the tenant's late entry into the teleconference presented challenges for completing this hearing within the allotted time. Due to the time limitations, I exercised the discretion set out in Rule of Procedure 2.3 to focus on the tenant's application to cancel the landlord's 1 Month Notice, the key issue in dispute. There was insufficient time to consider much if any of the tenant's application to require the landlord to comply with the Act, the Regulations or the tenancy Agreement. As the parties had no written tenancy Agreement and the only written Agreement was signed by former Tenant NT, the tenant's entitlement to orders in this regard would have been limited had there been sufficient time to address that aspect of the tenant's application in full.

At times, I found the tenant's questions and comments extended beyond being simply irrelevant to the issues before me, and approached becoming invasive and inappropriate in mixed company. The tenant had to be given frequent reminders that his questions and evidence needed to be relevant to the reasons stated for the landlord's 1 Month Notice. The landlord and his spouse also had to be reminded that their attempt to end this tenancy for cause had to demonstrate that there were sufficient grounds to do so based on events and incidents that had occurred by February 27, 2018, the date of the landlord's 1 Month Notice. At the hearing, I noted that much of the landlord's written evidence and statements provided by other tenants and former tenants referenced incidents that had occurred long after the 1 Month Notice was issued. I also note that the landlord did not enter much of this evidence until seven or eight days before the reconvened hearing. This new evidence left the tenant with little opportunity to provide any form of written response, and occurred long after the landlord's original written evidence was submitted.

Issues(s) to be Decided

Should the landlord’s 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave undisputed sworn testimony that he moved into the rental unit on August 17, 2015, and Tenant NL, who he agreed was the sole tenant signatory to the Agreement, did not move into the rental unit until late August 2015. Monthly rent was originally set at $1,350.00, payable in advance by the first of each month. This rent was to include two unspecified parking spaces in the driveway, a source of ongoing dispute between the tenant, the landlord and other tenants in this small building who also have access to parking spaces on the same driveway. Although a security deposit of $675.00 and a pet damage deposit of $675.00 were paid on July 19, 2015, the tenant maintained that these deposits were returned by the landlord to Tenant NT when she vacated the rental unit. The tenant asserted that he paid separate security and pet damage deposits to the landlord, which the landlord continues to hold. The landlord and his spouse denied the tenant's claim that he paid a separate security and pet damage deposit to them. As this was not an issue raised specifically in the tenant's application, I note this for information purposes only, and make no determination as to whether these deposits are currently held by the landlord, and if so, whose deposits are being held. Current monthly rent is now set at $1,404.00.

There was conflicting evidence from the parties as to who was responsible for there being no new tenancy Agreement following the departure of Tenant NT in March 2016. The tenant claimed that he asked the landlord to put his name on the original Agreement, but the landlord did not do so. The tenant testified that the landlord brought him a move-in condition inspection report, but the landlord never returned to request a completed copy. The tenant maintained that he would have been happy to sign a new tenancy Agreement, but none was ever prepared by the landlord for his signature. The landlord testified that he had spoken with the tenant a number of times to ask him if he would be willing to sign a separate tenancy Agreement. He said that on each occasion, the tenant expressed no willingness to sign one; however, the landlord did not assert that he ever prepared a separate tenancy Agreement for the tenant's signature and was refused that request by the tenant.

Although the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on or about June 4, 2018, both parties agreed that the tenant has paid and the landlord has accepted an etransfer amount, which set aside that Notice to End Tenancy. While the landlord has accepted this payment for June 2018, the landlord is still seeking an end to this tenancy on the basis of the 1 Month Notice issued in February.

As was noted in the original decision on this matter, the landlord identified March 1, 2018 as the effective date to end this tenancy, whereas the earliest possible effective

date would have been March 31, 2018. The landlord's acceptance of the payment from the tenant continued this tenancy until at least June 30, 2018.

The landlord entered into written evidence a copy of the February 27, 2018, One Month Notice to End Tenancy for Cause. In that Notice, the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;...*
- *put the landlord's property at significant risk.*

While the landlord expressed a multitude of concerns about the tenant's actions during this tenancy, the primary reasons identified by the landlord and the landlord's spouse was the tenant's refusal to comply with requests to keep his dog (previously dogs) leashed while out of doors and to clean up after his dog(s) defecated out of doors. The landlord also maintained that the tenant had refused to keep his door closed while he smoked on the porch outside his rental unit. This allowed smoke to filter into the rental unit, which the landlord identified as a significant risk to the landlord's property. The landlord also maintained that the tenant is frequently rude and offensive to other tenants who either currently live in this rental property or who have lived there. They maintained that a number of tenants have complained about the tenant's behaviours and that some have moved out as a result of his actions. The landlord and his spouse also found the tenant's interactions with them disturbing. There have also been ongoing disputes regarding the lack of clarity as to which portions of the driveway the tenant is allowed to use for parking.

Much of the landlord's written evidence and statements from other tenants in the building chronicle incidents that have occurred since the landlord issued the 1 Month Notice. The police have attended the rental unit a number of times recently.
The landlord's spouse testified that until the police attended in May 2018, the landlord had not put any concerns about the tenant's behaviours and actions in writing, preferring up to that point to deal with the tenant through informal discussions and text messages. The only written warning that the landlord provided to the tenant about the behaviours that the landlord finds objectionable were outlined in a May 28, 2018 letter. In that letter, the landlord noted that other tenants had complained about second hand smoke entering the rental property through the main door, which the tenant keeps leaving open when he smokes on the porch. This letter maintained that the tenant had been advised of the smoking request "time after time" to no avail. The letter also

advised the tenant that he had to keep his dog on a leash "at all times when he is outside on the property for his safety." The landlord cited specific occasions when the tenant's dog was on the driveway and when the dog was in the backyard defecating.

The landlord's spouse and one of the landlord's witnesses (KR) testified that the tenant's health and mobility concerns are such that he requires some other type of residential accommodation, perhaps one in which he receives some form of assisted care. In this regard, the 74-year old tenant confirmed that he has been experiencing health issues recently, but that his rental unit is close to his doctor and the local hospital where he has had to attend of late.

The tenant testified that the landlord and his spouse have not followed the *Act* in many of their interactions with him. This process commenced when they would not agree to place his name on the original Agreement signed by Tenant NT, and has continued through a series of repairs that he has requested to the rental unit. He maintained that his parking spaces should logically have been on the left side of the driveway, immediately opposite his rental space, but for some reason the landlord has insisted upon letting him use only the right side of the driveway. The tenant gave undisputed sworn testimony that he has complied with the landlord's request to park on the right hand side of the driveway.

The tenant did not deny the landlord's claim that he lets his dog (and previously his dogs) loose in the yard of the rental property where he can watch them at all times. He maintained that there is no requirement under the *Act* or under even the original Agreement that he keep his dogs leashed on the rental property. The tenant said that he picks up dg feces after his dog (and previously his dogs), that they are very well-trained and obedient and that they typically use a gravel area or more recently wait until he takes them to a park before they defecate. The tenant was very adamant in his belief that what he does with his dog on the property is his own business and that the landlord could not place restrictions on how he looks after his dog while on the property.

The tenant testified that he was informed as soon as he moved into the rental unit that he would only be allowed to smoke on the deck, which he has done without exception.

The tenant disputed a written statement attributed to former tenant M that was entered into written evidence by the landlord. The tenant maintained that he had a good relationship with M by the time M vacated the premises to move to another province for his work. The tenant claimed that M did not give the landlord authorization to enter any written statements M may have made into evidence for this hearing. The landlord's

spouse confirmed that M did not end this tenancy because of the tenant as M took another job in his field in Ontario.

Landlord Witness KR testified that they ended their tenancy in this rental property at the end of March 2018. KR said that the tenant should be in some form of care facility as his health situation has deteriorated to the point where he likely needs to be in another type of housing facility where he receives some form of care. KR claimed that the tenant was frequently rude to her, calling her names such as "bitch" and "slut" and that he had caused lots of problems for KR during her tenancy in this property. KR maintained that he attempted to get her car towed and was often making unfounded allegations that her vehicle was impeding his access to the driveway. KR claimed that the tenant would bang on the ceiling for no justified reason and took repeated actions to provoke her and force her to end her tenancy.

The tenant did not dispute that there had been difficulties between him and Witness KR. He attributed these difficulties to Witness KR and her lifestyle, which the tenant clearly found objectionable to him and the young children from his family who come to visit him. The tenant noted that the walls are thin and he was constantly having to deal with the noise and disturbance coming from KR's rental unit.

Landlord Witness KP testified that the tenant sits on his porch and "hassles everybody'". While KP confirmed the information contained in the letter she wrote and which was entered into written evidence by the landlord, KP said that she "never had a problem with him until he received the letter" (the 1 Month Notice) from the landlord in February. Since then, and particularly recently, as outlined in her letter, there have been a series of problems and incidents where the tenant's actions have disturbed her. Although KP said that she knew " little bit" about the interactions between former Tenant M and the tenant, this limited third party information was of little value to the matters before me, so I declined to hear this testimony from her due to the admitted limitations she expressed.

Analysis

Section 47(1) of the *Act* reads in part as follows:

Landlord's notice: cause

> ***47*** *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
>
> > *(d) the tenant or a person permitted on the residential property by the tenant has*

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,...or

(iii) put the landlord's property at significant risk;...

I should first note that the only example the landlord's spouse could identify whereby the landlord's property was put "at significant risk" related to the entry of second hand smoke from the porch through the main door to the dwelling. While such actions may significantly interfere with or unreasonably disturb other occupants of the rental property, I do not find that the landlord's property is "at significant risk" as a result of some second hand smoke that may be entering the building through the tenant's actions. I find no basis for the landlord to end this tenancy for cause on the basis of the landlord's property being placed at significant risk by the tenant.

Turning to the remaining reason identified by the landlord in the 1 Month Notice, I note that the landlord bears the burden of proof in establishing that, as of the date of the landlord's issuance of the 1 Month Notice, February 27, 2018 in this case, there was evidence that the tenant's actions significantly interfered with or unreasonably disturbed another occupant or the landlord.

As the landlord and his spouse do not reside on this property, other tenants (or former tenants) would be most directly affected by actions of this nature that could end a tenancy for these reasons. The landlord has provided a number of signed documents from tenants or former tenants, which the landlord maintains establishes that the tenancy should be ended for cause.
In reviewing these documents, I find that most of the specific incidents cited happened months after the landlord issued the 1 Month Notice. For example, in the two page letter from Witness KP, all but the last four sentences refer to incidents that have occurred between May 2 and June 2, 2018. The earliest of these incidents would have occurred more than two months after the landlord issued the 1 Month Notice.

In considering Witness KP's letter, I do note that they have expressed concern and exasperation at the extent to which the tenant's behaviours and actions are currently affecting her. In this regard, KP stated that the tenant was "making her life miserable," that others had had to move out because of the tenant's mean streak, and that her living unit was being "ruined by a bitter man who harasses anybody and everybody" and that she had had "enough."

At the hearing, Witness KP gave strong, firm and convincing sworn testimony that she had never had a problem with the tenant until he received the 1 Month Notice from the landlord. On this basis, I find that any real evidence that she provided to support the landlord's claim that this tenancy should be ended for cause applies to circumstances that have occurred **after and not before** the issuance of the 1 Month Notice. As noted earlier, my task in assessing this matter is to consider whether at the time the landlord issued the 1 Month Notice there was evidence to support the reasons cited for ending this tenancy for cause.

The landlord's written evidence from former Tenant M has been disputed by the tenant, who maintained that he had a good relationship with Tenant M by the time his tenancy ended. I have read the written evidence submitted by the landlord attributed to Tenant M. I note again that this letter seems to have been dated March 2018, which referred to a specific incident that occurred once more after the landlord issued the 1 Month Notice. Without Tenant M in attendance to corroborate these statements and based on the tenant's objection to Tenant M's wishes to not have the statement entered into written evidence at any proceeding, I do not find that the written statement from Tenant M can be given much weight given the detailed and cordial description provided by the tenant regarding Tenant M's last night spent in the rental property before Tenant M moved. There is also undisputed sworn testimony from both parties that Tenant M did not move because of any issues regarding the tenant, but moved to Ontario to take a job there.

The written evidence from Witness KR and her sworn testimony revealed concerns regarding the tenant, many of which at least extend to the period prior to February 27, 2018, the date when the 1 Month Notice was issued. Based on the written evidence and the sworn testimony of Witness KR and the tenant, it remains uncertain as to who was primarily responsible for this poor relationship. Both maintain that the other was to blame. For each example one tenant cited of bad behaviour or manners on the other's behalf, there was another example that the other tenant identified. Although I have no way of assessing who was at fault in this acrimonious relationship, it is entirely possible that both sides bear at least some responsibility. At any rate, I find that the written evidence and sworn testimony from Witness KR is insufficient on its own to demonstrate that the landlord had reason to end this tenancy for cause on February 27, 2018, when the landlord issued the 1 Month Notice.

In weighing the evidence presented by the parties, I find on a balance of probabilities that the landlord has not supplied sufficient evidence to demonstrate that as of February 27, 2018, this tenancy should have been ended for cause for the two reasons cited on the 1 Month Notice. It was not until May 28, 2018 that the landlord even provided the

tenant with any written request to discontinue actions that the landlord found objectionable. Even then, there is no mention in that letter that a failure to abide by these requests could result in termination of this tenancy for cause. Providing this type of written warning, although not an absolute requirement of the Act, is a prudent method of alerting a tenant that failure to comply with requests that may very well have been made throughout the tenancy could be viewed as grounds for ending the tenancy for cause. In this case, this letter was issued three months after the landlord issued the 1 Month Notice, seemingly without providing any type of formal warning.

In coming to this determination, I realize that the landlord has assembled an impressive listing of incidents and events that have occurred since the 1 Month Notice was issued that may very well have lent support to the landlord's allegations had they happened prior to the February 27, 2018 issuance of the 1 Month Notice. The sworn testimony and written evidence of Witness KP, and the written evidence attributed to Tenant M, also support the finding that the key events in question cited by the landlord occurred after the 1 Month Notice was issued.

Under these circumstances, I set aside the original decision and Order of Possession of May 11, 2018, and allow the tenant's application to cancel the 1 Month Notice. The Order of Possession issued on May 11, 2018 is set aside and of no force nor effect, nor is the landlord's 1 Month Notice of February 27, 2018. This tenancy continues until ended in accordance with the *Act*.

As the tenant was successful in this application, I allow the tenant to recover his $100.00 filing fee by reducing his next scheduled monthly rent payment by that amount.

In allowing the tenant's application to cancel the landlord's 1 Month Notice, I earnestly hope that the landlord's issuance of the 1 Month Notice and this hearing will alert the tenant to the need to treat neighbouring tenants, and for that matter, the landlord in a respectful way. Name calling and berating other tenants and the landlord may be viewed as unreasonably disturbing other occupants in the property and the landlord. Were it not for the unusual sequence of events in which the landlord has presented evidence that pertains to incidents that occurred primarily only after the issuance of the 1 Month Notice, this matter may very well have resulted in a very different outcome.

I address the tenant's application to issue orders regarding this tenancy as follows. Section 62 of the Act provides me with delegated power to issue orders to address any other issues arising out of a dispute as I see necessary under the circumstances.

After hearing the evidence of the parties and in order to ensure that the parties have an improved opportunity to continue with this tenancy in a way that can be maintained, I make the following orders.

- As there is no written Residential Tenancy Agreement between the parties, I order the landlord to prepare a standard Residential Tenancy Agreement, along the terms and lines used in the original Agreement entered into between Tenant NT and the landlord. In this new Agreement, the tenant shall be named as the tenant and monthly rent is to be set at $1,404.00, payable in advance on the first of each month. The new Agreement is to specifically note that the tenant is allowed up to two parking spaces, to be situated on the right hand side of the driveway as one enters the driveway from the street.

- I order the landlord to prepare the above-noted Agreement and Addendum and provide the tenant with a copy for the tenant's signing within 14 days of receiving this decision.

- I order the tenant to sign and return the Agreement and Addendum to the landlord within 14 days of having received the Agreement and Addendum from the landlord.

- I order the landlord to ensure that the tenant receives a signed and completed copy of the Agreement and Addendum within 7 days of having received the tenant's signed copy.

I order that the following provisions, or mutually agreeable language that both parties agree to, be included in the Addendum to the new Residential Tenancy Agreement to be entered into between the parties:

1. The tenant is allowed to have his dog roam without a leash in any completely fenced or gated yard on the rental property that is in the sole possession of the tenant, as long as the tenant is physically present and watching the dog. The tenant's dog is not allowed to roam unleashed on any other area of the property, including the driveway or any other portion of the property where the tenant does not have exclusive access.

2. The tenant also commits to remove dog feces created by his dog on the same day as that dog feces occurs.

3. The tenant is allowed to smoke on his porch. The tenant commits that he will not smoke within the rental building nor will he keep any doors or windows open such that second hand smoke can enter the rental building from the tenant's smoking.

Conclusion

I set aside the original decision and Order of Possession of May 11, 2018, and allow the tenant's application to cancel the 1 Month Notice. The Order of Possession issued on May 11, 2018 is set aside and of no force nor effect. The 1 Month Notice of February 27, 2018 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the tenant's application has been successful, I order the tenant to withhold $100.00 from the tenant's next scheduled monthly rent payment on a one-time basis.

I issue the following orders with respect to this tenancy:

- As there is no written Residential Tenancy Agreement between the parties, I order the landlord to prepare a standard Residential Tenancy Agreement, along the terms and lines used in the original Agreement entered into between Tenant NT and the landlord. In this new Agreement, the tenant shall be named as the tenant and monthly rent is to be set at $1,404.00, payable in advance on the first of each month. The new Agreement is to specifically note that the tenant is allowed up to two parking spaces, to be situated on the right hand side of the driveway as one enters the driveway from the street.

- I order the landlord to prepare the above-noted Agreement and Addendum and provide the tenant with a copy for the tenant's signing within 14 days of receiving this decision.

- I order the tenant to sign and return the Agreement and Addendum to the landlord within 14 days of having received the Agreement and Addendum from the landlord.

- I order the landlord to ensure that the tenant receives a signed and completed copy of the Agreement and Addendum within 7 days of having received the tenant's signed copy.

I order that the following provisions, or mutually agreeable language that both parties agree to, be included in the Addendum to the new Residential Tenancy Agreement to be entered into between the parties:

1. The tenant is allowed to have his dog roam without a leash in any completely fenced or gated yard on the rental property that is in the sole possession of the tenant, as long as the tenant is physically present and watching the dog. The tenant's dog is not allowed to roam unleashed on any other area of the property, including the driveway or any other portion of the property where the tenant does not have exclusive access.

2. The tenant also commits to remove dog feces created by his dog on the same day as that dog feces occurs.

3. The tenant is allowed to smoke on his porch. The tenant commits that he will not smoke within the rental building nor will he keep any doors or windows open such that second hand smoke can enter the rental building from the tenant's smoking.

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: June 14, 2018

Residential Tenancy Branch