



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE DERBY MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on November 27, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Jurisdiction

The issue of jurisdiction arose in this hearing, whereby the Landlord states they are not bound by the Act because they are a "housing based health facility", which is exempt under section 4 of the Act, as follows:

4 This Act does not apply to:

(g) living accommodation:

- (i) in a community care facility under the *Community Care and Assisted Living Act*,
- (ii) in a continuing care facility under the *Continuing Care Act*,

- (iii) in a public or private hospital under the *Hospital Act*,
- (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
- (v) in a housing based health facility that provides hospitality support services and personal health care**

In my consideration of this issue, I note that the tenancy agreement provided into evidence specifically addresses the services available to residents of this building. While I acknowledge that the contract indicates that some hospitality services are provided, such as cleaning, and some meals, the contract clearly states that the Landlord is not responsible for the physical and mental health of the Tenants, as per section 8(a) of the tenancy agreement. For this reason, I find this situation does not equate to a “housing based health facility” as there is insufficient evidence that this is predominantly a health facility. In fact it appear to be predominantly a residence for those who want additional help with cooking and cleaning, while still maintaining their independence.

I note the Landlord has stated they bring in people to put on health clinics for different things. However, these appear to be optional, and not part of the core business. I find this situation is more analogous to a residential tenancy, and I do not find the evidence before me sufficiently demonstrates that I do not have jurisdiction to hear this matter, or that it is exempt from the Act. I accept jurisdiction.

Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant’s application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice (the Notice) cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The landlord issued the Notice for the following reasons:

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

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

Tenant or a person permitted on the property by 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.*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenant acknowledged receiving the Notice on October 16, 2018. During the hearing, the Landlord stated that the Tenant has only lived in the rental unit for a matter of months, but the problems began early on. The Landlord stated that they noticed about a week after the Tenant moved in that she had too many belongings in the rental unit, and that it posed a fire hazard. The Landlord stated that the Tenant's belongings also limit access to the rental unit, due to boxes and belongings being in the way, often stacked high and in inappropriate places.

The Landlord stated that they have given the Tenant several verbal warnings, starting right at the beginning of her tenancy. However, the Tenant has been resistant to change. The Landlord stated that maintenance and cleaning staff refused to enter the rental unit sometime in August of 2018 due to the clutter. As a result, the Landlord stated they issued a letter to the Tenant on September 7, 2018, asking her to remove and clean up her belongings. The Landlord expressed a concern for fire safety and

stated that many of the Tenant's belongings are stacked right against the baseboard heater. The Landlord also stated that the Tenant has stacked boxes up in her personal storage locker such that the phone and cable panel is not easily accessible. Also, the Landlord stated that the Tenant has put her belongings in the storage locker such that it impedes the ventilation of the unit.

The Landlord stated that after the written warning letter on September 7, 2018, they attempted a follow up inspection later that month. The Landlord stated that the Tenant has refused entry since this warning letter, and they are now concerned about the general safety and cleanliness.

The Tenant stated that she suffered a heart attack shortly after she moved into the rental unit, and has had difficulty moving her belongings around, and maintaining the residence on her own. The Tenant stated that she has hired a 3rd party to come in and provide nursing services and cleaning help on a regular basis, in addition to the cleaning services provided by the Landlord as part of the tenancy.

The Tenant also stated that she took photos of her unit on September 9, 2018, right around the time she received the formal complaint and warning. The Tenant stated that the photos indicate the problem is not nearly as bad as the Landlord has indicated, and that there is no fire hazard. The Tenant stated that nothing of hers is actually against the baseboard, and she also does not turn the heat on, ever. The Tenant stated that there is no longer anything covering the phone and cable panels, nor was there anything in the way of the ventilation in the storage closet.

The Landlord pointed out that there are no dates on the photos, so it is difficult to determine when the Tenant took them.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid. I note that the relationship between the parties has not improved since the Notice was issued. However, my focus in this hearing is whether the Landlord had sufficient cause to end the tenancy, at the time the Notice was issued.

I turn to the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on October 16, 2018, and applied to dispute it within the acceptable time frame.

The landlord issued the Notice for the following reasons:

1. *Tenant or a person permitted on the property by the tenant has:*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
2. *Tenant or a person permitted on the property by 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.*
3. *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

After reviewing the Notice, I note that it lists multiple grounds for ending the tenancy, as above. However, it appears that much of the Landlord's testimony and evidence presented at the hearing relates to the first ground. The Landlord made no mention of any illegal activity the Tenant has been involved with. As such, I will not address the second ground any further.

As such, I will focus on the issue raised by the Landlord at the hearing, which relate to the state of the rental apartment, including their allegations of any potential health and safety hazards. Ultimately, I will have to determine whether or not it has been sufficiently demonstrated that this issue gives the Landlord sufficient cause to end the tenancy.

First, I find it important to note the following portions of the *Act*:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (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;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I encourage both parties to familiarize themselves with this portion of the Act. I caution the Tenant against refusing the Landlord entry. However, I also find it important to note that there are specific rules the Landlord must follow, prior to entering the rental unit, unless it is an emergency.

I note the Landlord has alleged that the mess and clutter in the Tenant's rental unit is creating a health and safety hazard. The Landlord largely focused on the fire hazard posed by the storage of the Tenant's items, and also the blocked access to the cable and phone panel for the suite, and the air ventilation system. I note the Tenant has provided some photos of the rental unit. However, they are undated, and it is not clear when they were taken. As such, it is difficult to use them to determine the validity of the Landlord's allegations with respect to the current state of the unit. I have placed very little weight on these photos.

I also note the Landlord has provided very little documentary evidence to support that the Tenant *seriously jeopardized the health or safety or lawful right of another occupant or the landlord*. The Landlord has provided no photos of any of these alleged hazards (items too close to heater, too close to cable/phone panel, and blocking the air ventilation). The Tenant has stated that there is nothing blocking any of the items in the storage room, and any empty boxes that may have been there after moving in, have now been removed. I also note the Tenant denies having anything right next to the heater. The Tenant acknowledges having items within the vicinity of the heater, and positioned against the wall with the heater (and window). I have considered the totality of this information, and I find the Landlord has provided insufficient evidence that there are items next to the heater, such that there is a fire hazard. Further, I also find the Landlord has provided insufficient evidence to support that the areas in the storage locker are blocked, as the Tenant has refuted these points. Without further evidence from the Landlord on this matter, I find they have not met the burden placed on them to support that the tenancy should end under any of the grounds they listed on the Notice.

I find that the landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, the Tenant's application is successful and the Notice received by the Tenant, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

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: November 26, 2018

Residential Tenancy Branch