



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for the recovery of the filing fee paid for this application.

The initial hearing was scheduled for October 5, 2018 and was adjourned to be reconvened on October 30, 2018. The Tenant submitted documentary evidence prior to the reconvened hearing date and confirmed that this was served to the Landlord. The Landlord confirmed receipt of the Tenant’s evidence.

The Tenant also submitted a death certificate for the second Tenant, which was the reason for the adjournment request.

At the reconvened hearing, the Landlord and an agent for the Landlord were present. The agent for the Landlord did not submit any testimony. The Tenant and a legal advocate for the Tenant (the “Tenant”) were also present. The parties were reminded of the legal obligation to tell the truth and confirmed their understanding.

Both parties were provided with the opportunity to submit testimony and evidence and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began in October 2014. As of October 1, 2018, the monthly rent is \$965.00. A security deposit of \$440.00 was paid at the outset of the tenancy.

A One Month Notice was posted to the Tenant's door on August 17, 2018, the same date the notice was signed by the Landlord. The One Month Notice states the effective end of tenancy date as September 30, 2018 and states the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Further details were provided as follows: 'Notices to the tenant have been issued on an ongoing basis since 2014 for similar issues, by both previous & new Management, of breaching sections 6, 13, 14, 17, 20 & 22 of the tenancy agreement.' (Reproduced as written).

The tenancy agreement was submitted into evidence. Section 6 of the tenancy agreement is regarding rent that is due on the first day of the month. Section 13 states that any additional occupants must be requested in writing to the landlord. Section 14 states that the rental may only be use for residential purposes and not for any illegal,

unlawful, commercial, political or business purposes. Section 17 is regarding conduct on the property, including that the tenant or guests of the tenant must not disturb, harass or annoy the other residents or the landlord.

Section 20 of the tenancy agreement states that the tenant's property must be kept in safe condition and stored properly. It further states, "it is a material term of this Agreement that items stored inside the rental unit must be limited in type and quantity so as not to present a potential fire or health hazard, or to impede access to, egress from or normal movement within any area of the rental unit." (Reproduced as written). This clause in the tenancy agreement also states that unlicensed vehicles may not be on the residential property.

Clause 22 of the tenancy agreement is regarding waste management and that garbage, waste or other material must not be stored or left in hallways, parking areas, or common areas of the rental property.

The Landlord testified that he served the Tenant with the One Month Notice due to repeated and continuous disregard for the safety of the property and for not abiding by the terms of the tenancy agreement.

The Landlord stated that the previous manager had sent the Tenant numerous letters regarding the breaches. The current Landlord took over in May 2017 and became aware that the same issues were occurring. These issues include having additional occupants in the rental unit, issues with parking, storing uninsured vehicles on the property, storing tires in his parking space and many other issues.

The Landlord submitted the letters into evidence dated November 26, 2014, two letters dated February 15, 2015, March 23, 2015, March 30, 2015, May 27, 2015, April 5, 2016, April 27, 2018 and August 10, 2018.

The letter dated April 27, 2018 noted uninsured vehicles parked on the property, a car listed for sale by the Tenant, and a visitor's car parked overnight with someone sleeping in it.

The letter warned that the Tenant and any visitors must follow the parking rules, and also noted that there were 11 tires in the Tenant's parking stall, which was not allowed. The letter provided until May 11, 2018 for the tires in the parking stall to be removed.

The letter dated August 10, 2018 noted that the Tenant continued with unauthorized use of the visitor parking. The letter further stated that a One Month Notice would be served, as warned in the previous letter.

The Landlord submitted photos of a car parked in the visitor parking dated December 2017, a photo of a car dated March 26, 2018 with a note attached from the Tenant including his phone number, a photo of a car in a parking stall dated April 2, 2018 noting different license plates on the car, an undated photo of a car stating that the Tenant's visitor was sleeping in it, a photo of a car parked in a visitor parking stall with a note stating the car is for sale and a phone number. A photo dated June 5, 2018 is a photo of a car with tires piled behind it in the parking stall.

The Landlord also submitted notices that were posted in the building and provided testimony that these notices were posted on the entry doors to the building, as well as the doors leading to the parking garage. One notice, dated June 14, 2018, states that there is no storage permitted in the parking spaces.

A second notice dated August 14, 2017 states that no overnight parking is permitted, and unauthorized vehicles may be towed.

The Landlord stated that he has personally witnessed the Tenant taking part in some of these actions, and stated that the Tenant admitted to him that he was selling a car in the parking lot.

The Tenant and the legal advocate submitted that they received black and white photos from the Landlord's evidence package and were therefore unable to confirm the details of the photos.

The Tenant also stated that only one formal warning letter was provided by the Landlord, through the letter dated April 27, 2018. They also noted that this letter addressed four violations dating back from December 2017 and that separate warning letters should have been provided.

The Tenant also stated that the previous warning letter, prior to the letter issued in April 2018, was from April 2016, two years prior. They testified that they are unable to confirm what occurred more than two years ago and that there is no proof as to whether those issues were resolved during that time period.

The Tenant agreed that he had to sell on vehicle after his spouse, the co-tenant, passed away.

The Landlord stated that the Tenant removed the tires from the parking stall, but that they had been stored there again. The Landlord also testified as to a time when the Tenant parked in another resident's parking stall.

The Tenant responded by stating that he had permission from the other tenant to park in their parking stall. The Tenant also stated that he had seen the general notices posted in the building, but had not been aware that they were concerning an issue with him as he had already corrected any issues that had been brought to his attention.

The Tenant confirmed receipt of the One Month Notice on or around August 17, 2018; he was unsure of the exact day the notice was received.

Analysis

I refer to Section 47(4) of the *Act* which states that a tenant has 10 days in which to dispute a One Month Notice. As the Notice was received on or around August 17, 2018 after the Landlord posted it on the door, and the Tenant applied for Dispute Resolution on August 21, 2018, I find that he applied within the 10 days allowable under the *Act*.

Therefore, I find that it must be determined whether the reasons for the One Month Notice are valid. I note that when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

As one of the grounds for ending the tenancy was a breach of a material term of the tenancy agreement, I refer to Section 47(1)(h) of the *Act*. This Section states that a One Month Notice may be provided if the tenant is in breach of a material term of the tenancy agreement, and if the issue has not been corrected after the landlord provides reasonable time to do so in written notice.

As the Landlord provided a warning letter on April 27, 2018 noting that the tires stored in the Tenant's parking stall must be removed by May 11, 2018, I find that this is the only issue in which a timeframe was provided in which to correct an issue of concern. However, the Tenant and Landlord were not in agreement as to whether the issue with the tires was resolved after this letter.

Although the Landlord submitted a photo of a car in a parking spot with tires piled behind it, I cannot confirm that this is the Tenant's car, the Tenant's parking space or that the tires belonged to the Tenant. As the Tenant was unable to clearly see the photo during the hearing, he was not able to confirm the details of the photo or when the photo was taken.

As such, I find that I cannot rely on this photo as evidence that the issue with tire storage continued beyond May 11, 2018. Therefore, I find that the Landlord has not proved that the tenancy should be ended due to a breach of a material term of the tenancy agreement.

The One Month Notice also states that the Tenant or guest has significantly disturbed or interfered with the landlord or other occupants, seriously jeopardized the health or safety of the other occupants or landlord, and put the property at significant risk.

While I accept the letters submitted into evidence as proof of an ongoing issue, I find that the letters issued more than two years ago to not be reliable, as they do not confirm that a current issue remains. However, the letter in April 2018 noted concerns with parking, uninsured vehicles and the Tenant selling cars in the parking lot.

The Tenant was in agreement with selling one car after the passing of his spouse. He was not in agreement as to whether any of his guests stayed overnight in a vehicle, or that he parked anywhere without permission. When two parties provide conflicting testimony, the party with the burden of proof must submit sufficient evidence over and above their testimony to establish their claim.

I find insufficient evidence from the Landlord to establish that the concerns noted on the One Month Notice are ongoing, that they continued after the warning letter in April 2018, or that they are causing significant disturbance or interference, serious health and safety concerns, or putting the Landlord's property at risk.

As such, I do not find that the Landlord met the burden of proof for me to be satisfied as to what occurred with the Tenant's actions or behaviour on the residential property. Therefore, the One Month Notice, dated August 17, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenant was successful in his Application for Dispute Resolution, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*. The Tenant may deduct \$100.00 one time from the next monthly rent payment.

Conclusion

The One Month Notice dated August 17, 2018 **is cancelled and of no force or effect.**
This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant **may deduct \$100.00** from the next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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 1, 2018

Residential Tenancy Branch