



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant attended with two advocates, D.F. and C.N., with advocate D.F. primarily speaking on behalf of the tenant. The landlord's agent attended on behalf of the landlord.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence, served on the landlord by email. The tenant confirmed receipt of the landlord's evidentiary materials served by email. Although the both parties did not serve all documents in accordance with section 89 of the *Act*, based on the undisputed testimonies of the parties, I find that the landlord was sufficiently served with the tenant's application for dispute resolution and that evidence was exchanged between the parties pursuant to section 71(2)(c) of the *Act*.

Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? And if not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. As noted in the written tenancy agreement, this tenancy began in April 2018 as a month-to-month tenancy requiring monthly rent of \$950.00. The landlord's agent explained that the rental unit is located on the second floor of a three-storey apartment building.

The parties submitted a copy of the One Month Notice dated October 5, 2018 into evidence, which states an effective move-out date of November 30, 2018, with the following box checked off as the reason for seeking an end to this tenancy:

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

- *significantly interfered with or unreasonable disturbed another occupant or the landlord.*

I note that the landlord has provided the following comments in the "Details of Cause" section provided on the form.

Nuance to the neighbours. I have received many complaints from the neighbours.

The landlord's agent testified that the One Month Notice was served to the tenant by posting on the tenant's rental unit door on October 5, 2018. The tenant acknowledged receiving the One Month Notice posted on her door, but could not recall the actual date it was received. Therefore, I refer to section 90 of the *Act* which provides that a notice served by posting on the door is deemed received on the third day after it is attached. As such, I find that the One Month Notice was deemed received by the tenant on October 8, 2018, the third day after posting.

The landlord's agent testified that the tenant has been involved in disturbances with guests to her rental unit, which have required the involvement of police. The landlord's agent referenced an incident in August 2018 in which police attended and arrested the tenant's guest. The landlord's agent testified that the other residents in the building have complained about the disturbances and are fearful for their safety. The landlord submitted into documentary evidence a letter from a neighbouring resident to the tenant's rental unit who has stated she is moving out, after living there for five years, due to the "countless visits by police due to the fighting and yelling between the female who lives there and her boyfriend...". The neighbouring resident further stated in the letter that the tenant's guest would "almost nightly" toss things at the tenant's balcony or climb up the outside of the building to access the tenant's balcony.

The tenant filed an Application to dispute the One Month Notice on October 11, 2018.

The tenant disputes the One Month Notice on the basis that the disturbances caused at tenant's rental unit were the result of domestic violence against the tenant by another party. The tenant submitted court papers into documentary evidence that require the other party not to have contact with the tenant and "not to go or to be found within 300 meters" of the rental property address.

The tenant's advocates stated that the tenant's intercom access was not functioning and as a result, guests to her unit would yell up to the tenant's rental unit to request access. The tenant submitted no evidence that she made any efforts to request the repair of the intercom, however, her advocates stated that she verbally notified the building manager of the need to repair the intercom.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant is deemed to have received the landlord's One Month Notice on October 8, 2018.

The tenant filed an application to dispute the notice on October 11, 2018, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice.

In this matter, the landlord must prove, on a balance of probabilities, that the tenant or a person permitted on the property by the tenant caused "significant" disturbance.

I find the documentary evidence submitted by the tenant supports her claim that she was a victim of domestic violence, and that it was the incidents of domestic violence that resulted in the "significant" disturbances at the rental unit requiring police intervention.

As I have found the disturbances to be the result of domestic violence, I do not find that the tenant caused the disturbances. Although the person who caused the disturbances was someone known to the tenant, it is unclear if the tenant permitted the person to be on the property or if the person was an unwanted guest. Generally, if a tenant has an unwanted guest causing a disturbance, it is their responsibility to call police for assistance to have the person removed in order to end the disturbance, if the person refuses to leave after be requested to do so by the tenant. However, due to the domestic violence nature of the disturbances, it is unclear if the tenant was able to call police or was prevented from doing so by the offending party.

In the hearing, the tenant's advocates stated that the tenant is working with support workers and is cooperating with police to ensure the court-ordered no-contact conditions related to the other party are enforced.

At the hearing, the tenant testified that her intercom does not function, and therefore she permitted her guests to yell up to her rental unit to request access. Although I do not find the tenant's response to the non-functioning intercom to be reasonable, I find that this is an issue that can be addressed. As the landlord's agent is now aware that the tenant's intercom requires repair, the parties can work to resolve that issue to avoid future disturbances related to the reportedly non-functioning intercom.

In summary, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause. The tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant was successful in her application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated October 5, 2018 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

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