Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV HOLDINGS CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), to cancel 1 Month Notice to End Tenancy for Cause, (the "Notice") issued on August 23, 2019, for a monetary order for money owed or loss under the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy.

I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the tenant's application to recover the filing fee at these proceedings. The balance of the tenant's application is dismissed, with leave to re-apply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice issued be cancelled?

Background and Evidence

The tenancy began on January 15, 2005. Current rent in the amount of $1,179.00 was payable on the first of each month. The tenant paid a security deposit of $425.00 and a pet damage deposit of $425.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on September 30, 2019.

The reason stated in the Notice was that the tenant has:

- Breached a material term of the tenancy agreement.

The landlord testified that the tenant continues to breach clause #15 of the tenancy agreement, which is;

Moving

> The tenant's property must be moved in or out of the residential property through designated doors.

The landlord testified that the tenant was required to contact the landlord during normal business hours to make arrangements to move furniture, boxes or other personal item, as the only elevator that is designated for this use is the larger elevator which they have to make sure it is properly padded and they can locked the elevator if, necessary.

The landlord testified this is to ensure that the elevator is protected from damage as the electronic parts are very expensive to replace. The landlord stated that the small elevator is not to be used.

The landlord testified that there is also a designated door to remove items from the premises, which is located on level “B” which is the service entrance which has a ramp and a parking area. The landlord stated no items are to pass through the front lobby common area.

The landlord testified that the earliest they can go back was 2011, which notified all the residence that this was the protocol and again in 2012, 2013, and 2016.

The landlord testified that on July 18, 2018, the tenant was given a warning letter regarding their bike and notified of the designated doors and rules for personal items.

The landlord testified that on September 22, 2018, the tenant was seen hauling a large piece of furniture in to the elevator; however, the tenant did not notify the landlord and arrangements were not made, so they could protect the elevator and the tenant did no use the required designated door. The landlord testified that the tenant was given a final warning letter on October 5, 2018.

The landlord testified that on August 19, 2019, which is what the subject of today’s hearing was that the tenant did not get the landlord’s permission to use the larger elevator and was moving personal items from their unit and was using the small elevator, which cannot be used for this purpose at any time, and the tenant’s personal items were removed through the front lobby, not the designated door.

The landlord testified that they immediately spoke to the tenant; however, the tenant shrugged it off and approximately 20 minutes the tenant started to move items again. Although they were now in the larger elevator, they were not notified so they can protect the elevator. The landlord stated that had the tenant told them that they had more items to move they would have ensured the large elevator was protected.

The landlord testified that the elevators are very expensive to maintain, and the electronics can easily be damaged. The landlord stated that the tenant purposely is ignoring the notices, letters and the written warnings they have been given.

The tenant acknowledged that they have received the letters from the landlord’s regarding the moving of personal items. The tenant confirmed receiving the warning letter in July 2018 and the warning letter of October 5, 2018.

The tenant testified that in September 2018, that they did use the designated elevator to remove a couch; however, they had taken the legs off. The tenant stated they did not notify the landlord that they were going to use the elevator for this purpose, and they did not use the designated door.

The tenant testified that in August 19, 2019, they were removing the items they had stored on their deck because they only had three days left before the deck was going to be painted.

The tenant testified that they used the small elevator, and took the items through the lobby, which were on a dolly, which consisted of a couple of boxes, suitcase, some plastic sleds and so other items. The tenant stated these were not furniture items.

The tenant acknowledged that the landlord was in the hallway and asked them why they are using the small elevator to move their personal items; however, they did not want to deal with the landlord and that is why they shrugged it off. The tenant stated that they did move more personal items 20 minutes later, in the large designated elevator and took them out the designated door. The tenant confirmed that they did not give the landlord notice.

The tenant testified that they do not believe they have breached a material term of the tenancy agreement as they were not removing furniture. The tenant stated that the landlord's keep changing the rules and that it is at their own risk, so if they damage anything, they are responsible to fix.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Breached a material term of the tenancy agreement

In this case, the tenancy agreement stated that personal property must be moved in or out of the residential property through the designated doors. Personal property would be any items, such a boxes, bicycles, and furniture. Designated doors would be any door that is accessible this would include elevator doors.

In this case, the landlord has one elevator that is designated for the use of moving personal property to and from the premise. I find it not unreasonable that prior notice must be given by the tenants to the landlord. This is for the sole purpose of the landlord ensuring the elevator is protected and damage does not occur.

While I accept the risk of using the elevator is the responsibility of the tenant. However, the landlord is responsible to ensure both elevators are properly functioning for all the residence of the building and it is within their rights to ensure it is protected.

The landlord has designated the service door at the back of the building for these items. I find that reasonable as this is to ensure the main lobby area is not blocked, damage or restricts another occupants' access.

The tenant has been given multiple letters indicating what the protocol is for moving personal items and designated doors, going back to 2011. The tenant has been given two written warning and the most recent one on July 23, 2019, which states no furniture or multiple items.

On August 19, 2019, the tenant moved from the premise personal property, using a dolly, which contained boxes, sleds and other items. The tenant did not use the designated elevator or the designated door. I find the tenant breached clause #15 of their tenancy agreement.

Further aggravating the matter, on August 19, 2019, after being questioned by the landlord, who was shrugged off by the tenant, the tenant continued to remove personal items from the property. Although I accept the tenant did use the designated elevator and doors at this time, but without notifying the landlord, which would have been reasonable of the tenant when questioned just 20 minutes prior by the landlord.

As I have found the tenant breached a material term of the tenancy agreement. I find the Notice issued on August 23, 2019, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice. As the tenancy legally ended on the effective date of the Notice, which was September 30, 2019,

As the landlord has accepted occupancy rent for the month of October 2019, I find it appropriate to extend the effective vacancy date in the Notice to October 31, 2019, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **October 31, 2019, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application to cancel the Notice, is dismissed.

The landlord is granted an order of possession.

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: October 25, 2019

Residential Tenancy Branch