



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, AAT, RR

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 Notices to End Tenancy for Cause (the 1 Month Notices) of September 30, 2019 and October 7, 2019, pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As the tenant confirmed that they received two separate 1 Month Notices to End Tenancy for Cause (the 1 Month Notices) on September 30, 2019 and October 7, 2019, I find that the tenant was duly served with these Notices in accordance with section 88 of the *Act*. The tenant provided sworn testimony and written evidence that they sent the landlord a copy of the tenant's original dispute resolution hearing package by registered mail on October 10, 2019. The tenant provided a copy of the Canada Post Tracking

Number and Customer Receipt to confirm this registered mailing. In accordance with sections 89 and 90 of the Act, I find that the original hearing package in which the tenant sought cancellation of the September 30, 2019 1 Month Notice was deemed served to the landlord on October 5, 2019. The tenant gave undisputed sworn testimony that they provided a copy of their amended application to cancel the second 1 Month Notice, dated October 7, 2019, by dropping this material in the landlord's office mailbox on October 16, 2019. I find that the amended application was deemed serve to the landlord in accordance with sections 89 and 90 of the Act on October 19, 2019.

Issues(s) to be Decided

Should the landlord's 1 Month Notices be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a reduction in rent for the reduction in access to their rental unit? Should any orders be issued against the landlord to enable the tenant to restore full access to this rental property?

Background and Evidence

The tenant testified that they moved into this large rental complex about seven years ago. The tenant said that the monthly rent is set at \$800.00 or \$850.00, payable in advance on the first of each month.

The tenant entered into written evidence a copy of the 1 Month Notice of October 7, 2019 issued to the tenant by the landlord for the following reason:

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

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

The tenant said that the other 1 Month Notice identified the same reason for ending this tenancy. The tenant denied that they had significantly interfered with or unreasonably disturbed other occupants or the landlord.

The tenant provided undisputed sworn testimony that the landlord has failed to issue the tenant a key fob to enable the tenant to gain access through the parking garage to this rental building. The tenant testified that since mid-September, they have had to rely on other tenants in the building to allow them access to either the parking garage or the front of the building so as to gain access to their rental unit within the building. The tenant said that they advised the landlord in mid-September 2019 that their key fob had

been stolen from their car in the parking garage. The tenant said that they had the requested \$100.00 to obtain the parking garage key fob replacement at one point, but the landlord advised them that they would have to recalibrate the key fob before that could happen. The tenant said that the landlord has never provided a replacement key fob for the parking garage to the tenant. The tenant also said that the original key fob to the front door of this building stopped operating some time ago, and the landlord has not offered a replacement for that fob, either.

The tenant applied for a rent reduction of \$400.00 to compensate them for the loss of full access to the building afforded by the landlord's delay in providing the tenant with replacement key fobs.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In this case, the landlord has failed to provide any written evidence with respect to the 1 Month Notices issued to the tenant, and has not attended this hearing. Under these circumstances, I allow the tenant's application to cancel the 1 Month Notices issued to them by the landlord.

Turning to the remainder of the tenant's application, the tenant has provided undisputed sworn testimony that the landlord has been tardy in providing the tenant with a replacement key fob to enable the tenant to access the parking garage and, by that method, their rental building and rental unit. There is no doubt a cost to replace lost or stolen key fobs of this nature, which the tenant has identified as \$100.00 per fob. The landlord chose to not supply evidence to dispute the tenant's claim and offered no sworn testimony to call into question the tenant's assertion that they advised the landlord that they had the requested \$100.00 at one point and were willing to pay to have it replaced. For whatever reason, there is undisputed sworn testimony that the landlord has not followed through with providing a replacement key fob for the parking garage to the tenant. While the tenant would normally be expected to incur the cost of a lost or stolen key fob, I accept the tenant's undisputed sworn testimony and written evidence in the form of their application for dispute resolution that their access to this

building and their rental unit has been limited and inconvenienced by the landlord's delay in issuing the tenant with a replacement key fob.

Since I find that the value of this tenancy has been reduced by at least \$100.00 through the tenant's loss of their previous access to the parking garage, I order the landlord to provide the tenant with a properly functioning replacement parking garage key fob as soon as possible at no cost to the tenant. In the event that the landlord fails to comply with this order by November 30, 2019, I order that the monthly rent for this tenancy is to be reduced by \$100.00 as of December 1, 2019. This reduced rent would stay in effect until the month after the landlord complies with this order.

In the event that the tenant's key fob to enter the front of this building is no longer operating properly as a result of some type of mechanical or electronic malfunction, I order the landlord to provide the tenant with a replacement fob for that entrance to this building at no charge to the tenant. In the event that there is some other reason for the malfunctioning of the key fob for the front entrance of this building for which the tenant is responsible, I order the landlord to issue a replacement fob to the tenant, once the tenant has provided the landlord with the requested replacement fee for that fob.

Conclusion

I allow the tenant's application to cancel the 1 Month Notices issued to the tenant in September and October 2019. These Notices to End Tenancy are of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I order the landlord to provide the tenant with a properly functioning replacement parking garage key fob as soon as possible at no cost to the tenant.

In the event that the landlord fails to comply with this order by November 30, 2019, I order that the monthly rent for this tenancy is to be reduced by \$100.00 as of December 1, 2019. This reduced rent would stay in effect until the month after the landlord complies with this order.

I order the landlord to provide the tenant with a replacement fob for the front entrance to this rental building. I order that the replacement of this fob is to be at no cost to the tenant in the event that the tenant's existing fob results from some type of mechanical or electronic malfunction. In the event that the tenant is responsible for failing to have a properly functioning front door fob to access this rental building, the landlord is only

required to replace the fob upon receipt of the established fee for replacing this mechanism from the tenant.

I dismiss the remainder of the tenant's application as I believe the orders issued above take into proper account the loss in value of this tenancy experienced by the tenant.

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 07, 2019

Residential Tenancy Branch