Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC / OPC FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The first, brought by tenant MH (which is a company) against landlord S (which is a company) for an order cancelling a One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47 of the Act (the "**Tenant's Application**").

The second application, brought by landlord LK (who is a property manager of S) against tenant EA (who is a director of MH) for an order of possession for cause pursuant to section 55 of the Act, and authorization to recover the filing fee for this application from EA pursuant to section 72 (the "**Landlord's Application**").

LK attended the hearing on her own behalf and on behalf of landlord S. EA attended the hearing on her own behalf and on behalf of tenant MH. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Scheduling of Landlord's Application

Only the Tenant's Application was scheduled to be heard at the hearing. The Landlord's Application was scheduled to be heard on August 11, 2020 before a different arbitrator. Ordinarily, these two hearings would have been scheduled to be heard at the same time but, due to the discrepancy in the names used by the parties when filing their applications, this did not happen.

LK and EA agreed that both hearings should be heard together, and both consented to them being heard at this hearing. Accordingly, I ordered that the Landlord's Application be heard at this hearing.

Preliminary Issue – Jurisdiction

On the tenant MH's Notice of Dispute Resolution Proceeding form, MH took the position that the contract that currently governs the rental of the rental unit was not a residential tenancy agreement but was rather a *commercial* tenancy agreement. It stated that there was a "previous residential lease".

However, at the hearing, EA testified that the parties had not yet entered into a commercial lease, but that one was being negotiated. She testified that she understood that the rental unit was currently rented pursuant to a residential tenancy agreement between landlord S (the full corporate name of which is recorded on the cover of the decision) and herself. She also testified that she currently resides in the rental unit.

LK did not disagree with the EA's testimony.

Accordingly, I will not address the issue of the RTB's jurisdiction further. The Act provides me with jurisdiction to adjudicate disputes between landlords and tenants relating to residential tenancy agreements.

Additionally, I find that, as the tenancy agreement is between landlord S and tenant EA, that these parties are the proper parties to each of the applications. As such, I order that both applications be amended to reflect this, and for landlord S's full corporate name (listed on the cover of this decision) to be included in the style of cause.

Hereinafter, I will refer to landlord S as the landlord and tenant EA as the tenant. I will refer to the other former parties by their initials (LK and MH).

Preliminary Issue – Service of Documents

The tenant testified, and LK confirmed, that she served the landlord with the notice of dispute resolution form and supporting evidence package. LK testified, and the tenant confirmed, that the landlord served the tenant with its notice of dispute resolution form and two pages of documentary evidence which included a rental application form completed by the tenant, and two emails. The landlord submitted roughly 70 pages of documentary evidence to the Residential Tenancy Branch in support of its application. LK admitted that the landlord did not serve these documents on the tenant.

Rules of Procedure 3.13 and 3.15 require that a party serve an opposing party with its documentary evidence in advance of the hearing. The landlord did not do this and did not provide an explanation as to why it did not. Accordingly, I excluded all documentary evidence submitted by the landlord to the RTB in support of its application, except those documents referred to above.

In the hearing, LK stated she understood this decision, and during the rest of the hearing referred only to the tenant's documentary evidence and those documents of the landlord admitted into evidence. She gave oral testimony in support of the Landlord's Application as well.

Issues to be Decided

Is the landlord entitled to an order of possession and to recover the filing fee?

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is a large single-detached house. As stated above, the landlord and tenant entered into a written, fixed term tenancy agreement starting June 1, 2020 and ending May 31, 2021. Monthly rent is $4,500 and is payable on the first of each month. The tenant paid the landlord a security deposit of $2,250, which the landlord continues to hold in trust for the tenant.

The tenant completed a rental application form on May 1, 2020, in which she indicated that that she would be occupying the rental unit along with her daughters, and another family comprised of her friend ("**RL**"), RL's husband ("**PL**") and their two children. The rental application indicated that PL would be travelling.

I must note that, on the rental application, the tenant indicated that she was the executive director of MH. I understand that MH is an organization that provides "luxury women's sanctuaries" for women and their children who are escaping domestic issues. MH formerly operated such a sanctuary in the same municipality as the rental unit is located in, but it ceased operated (the reasons for which are not relevant to this application).

The landlord approved of the tenant and RL and their families living in the rental unit and agreed to the rent the rental unit to the tenant. The parties signed the tenancy agreement on May 3, 2020. Only the tenant's name appeared on the tenancy agreement, however. RL and PL's family did not appear on it.

The tenant testified that, prior to the start of the tenancy, RL changed her mind about living in the rental unit. The tenant testified that the landlord's property manager was disrespectful to her and "interrogated her" about "bad reviews" during the move-in inspection on May 29, 2020, and that the owner of the rental unit was rude to PL when he spoke with him to get a keycode for a door.

Additionally, during the move-in inspection, the tenant discovered a locked room which she would not have access to during the tenancy that contained the owner's possessions. She believed this was a breach of the tenancy agreement, which she understood was to give her full use of the rental unit.

These incidents caused RL not to want to live in the rental unit. As such, she and her family did not move into the rental unit. The tenant and her children were not so dissuaded and moved in on June 1, 2020.

Since the start of the tenancy, the tenant has had “a few sets” of roommates. She testified that three sets of mothers (and their children) have come to the rental unit. She testified that currently her family and two other mothers and their children reside in the rental unit (one of the mothers has four children, and I am unsure how many the other mother has). She also testified that another woman and her two children stayed in the rental unit for one night as they were fleeing domestic violence.

The tenant testified that these families living with her are her roommates, and that she believes she is entitled to have them live with her, as the landlord knew she intended to have roommates when she applied to be a tenant.

On June 24, 2020, the landlord served the tenant with the Notice by placing it in the rental unit’s mailbox. It had an effective date of July 31, 2020. It set out the reasons for the Notice being issued as:

1) The tenant has allowed an unreasonable number of occupants in the unit;
2) The tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord’s property; and
3) The tenant has assigned or sublet the rental unit without the landlord’s written consent.

LK testified that the landlord served the Notice because it does not believe that it is being used for residential tenancy purposes. Rather, the landlord believes it is being used as a busines asset of MH and rented out to other families. She testified that MH posted it for rent on Craigslist, offering to rent rooms therein for $1,600 per month. No documentary evidence is before me corroborating this, but the tenant admitted to making such postings to “test the market”. She testified that no part of the rental unit was rented due to such postings.

LK testified that the landlord and tenant had a verbal agreement that the owner could store certain items in the rental unit during the tenancy, but that the tenant violated this by term by “breaching through the door”. She testified that that representatives of the landlord attended the rental unit on June 18, 2020 to retrieve the owner’s possessions, but some were missing.

LK testified that the landlord does not know who is living in the rental unit, that the tenant or those occupying the rental unit has taken the owner’s possessions and alleged that the tenant has sublet or assigned the rental unit to parties unknown.

The tenant denied these allegations. As stated above, she admitted to posting the Craigslist advertisement, but did so in anticipation of being able to convert the tenancy from a residential tenancy for her, her children, and her roommates to live in the rental unit, to a commercial tenancy whereby MH could rent out rooms in the rental unit as part of its business of providing “luxury women’s sanctuaries”

Analysis

The Notice was served on the tenants on June 24, 2020 by leaving it in the rental unit's mailbox. Pursuant to section 89 and 90, I find that the tenant is deemed served with Notice on June 27, 2020, three days after the landlord delivered to Notice. The tenant applied to dispute the Notice on July 4, 2020, seven days after having been served with it.

At the time the tenancy was entered into, notices to end tenancies were not permitted to be served due to an emergency order issued in response to the COVID-19 pandemic. However, on June 24, 2020, this order was repealed and replaced by *Residential Tenancy (COVID-19) Order No. 2*, MO 195/2020 (the "**Emergency Order No. 2**"). Emergency Order No. 2 was effective immediately and lifted the prohibition on landlords from issuing notices to end tenancy for cause unrelated to the non-payment of affected rent (rental arrears accrued during the provincial state of emergency).

As the Notice does not relate to the non-payment of affected rent, as its issuance was not prohibited by Emergency Order No. 2, and as it meets the form and content requirements of section 52 of the Act, I find that that the Notice is valid.

Section 47 of the Act, in part, states:

> **Landlord's notice: cause**
> **47** (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> (c) there are an unreasonable number of occupants in a rental unit;
>
> […]
>
> (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
>
> (i) has caused or is likely to cause damage to the landlord's property,
>
> […]
>
> (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord must prove that it is more likely than not that the tenant acted in such a way to satisfy the conditions set out in section 47 of the Act.

Unreasonable Number of Occupants

On the rental application form, the tenant represented to the landlord that the she would share the rental unit with RL's family. The landlord agreed to this. However, once the tenancy commenced, RL's family did not move into the rental unit.

Instead, the tenant took in two other families as "roommates". There are now three families living in the rental unit, as opposed to the two that was approved by the landlord at the start of the tenancy.

The tenant argued that this should not matter, as, at the start of the tenancy, the landlord approved the tenant's plan to have roommates (RL's family). She argued that this implicitly means that she has the landlord's approval to have any number of roommates. She takes the position that the landlord's approval of RL's family as roommates is the tantamount to the landlord's approval of the tenant having any roommates that she wants.

Respectfully, I disagree with this position. The rental application specifically required the tenant to list the names of the additional occupants of the rental unit. I find that by asking applicants to list the names of proposed additional occupants, the landlord indicated the importance of both the number and the specific identities of the additional occupants. If the landlord only intended to confirm whether or not the tenant intended to have roommates (and did not care the number or identities of them), the landlord could simply have included a question on the rental application asking if the tenant intended to have roommates.

As such, I do not find that the landlord agreed that the tenant could have whatever roommates she wanted live in the rental unit. Rather, I find that the landlord agreed that the tenant could have RL and her family specifically as roommates.

I note that Policy Guideline 13 states:

> H. OCCUPANTS
> If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless

> the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.
>
> Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant.

I find that, despite the fact the tenancy agreement contains no restriction on additional occupants, the tenant is not permitted to have additional occupants in the rental unit absent the landlord's consent. In coming to this conclusion, I rely on the fact that the landlord specifically requested the names of additional occupants on the rental application form. In light of this fact, it makes little sense to imply as a term of the tenancy agreement that the tenant could permit additional occupants in the rental unit. The request for the names of the additional occupants on the rental application acts as a limiting factor on both the number and identity of the additional occupants.

The question then becomes whether the number of occupants in the rental unit is unreasonable. I do not have any evidence as to specific living conditions of the current occupants of the rental unit, so I cannot say whether the mechanics of three families living there is unreasonable. Rather then, I must look to the reasonable expectations of the parties in determining whether the number of occupants in the rental unit is not reasonable.

Currently, at least ten individuals live in the rental unit (the tenant and her two children, another mother with her four children, and a third mother with some number of children). This is more than the seven people the landlord agreed could occupy the rental unit at the start of the tenancy. Furthermore, the additional occupants are comprised of at least three more children than the landlord agreed to, without any further adult supervisor.

Based on the expectations set at the start of the tenancy, I find that ten tenants (and three separate families) is not a reasonable number of occupants to be living in the rental unit. I do not find that the landlord reasonably expected the rental unit would be occupied by three separate families. Additionally, I do not think it reasonable for the tenant to have invite two additional families to live in the rental unit with her absent consultation with the landlord.

I find that it was necessary for the tenant to have sought and obtained the consent of the landlord that the two additional families could move into the rental unit. She did not do this. As such, I find that the she has satisfied the condition of section 47(1)(c), and that the issuing of the Notice was warranted.

As such, there is no need for me to examine the other reasons listed on the Notice for ending the tenancy. The landlord need only prove one of them to be true in order for the Notice the valid.

Section 55(1) of the Act states:

> **Order of possession for the landlord**
> **55**(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
>
> (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
>
> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have already found that the Notice meets form and content requirements of section 52 of the Act and I have upheld the Notice.

As such, the landlord is entitled to an order of possession.

I am not unsympathetic to the situation of the tenant and the other occupants of the rental unit. I understand that they may have difficulty in locating new accommodations in a short period of time. Similarly, with the school year starting shortly, it may be difficult to immediately locate new accommodations and prepare for what will undoubtably be a challenging start of semester.

In light of these concerns, and in light of the fact that the parties have engaged in a dialogue to convert the residential tenancy to a commercial tenancy (which may allow the other families to remain in the rental unit), I will delay the date by which the landlord is entitled to vacant possession unit the end of September 2020. In such time, the parties may be able to come to an agreement regarding the conversion of use of the rental property, or, failing that, the occupants of the rental unit can secure new housing.

As such, I order that the tenant and all other occupants of rental unit deliver vacant possession of the rental unit to the landlord no later than September 30, 2020 at 1:00 pm. The tenant is responsible for paying the full amount of rent for September, in accordance with the tenancy agreement and the Act.

Pursuant to section 72(1) of the Act, as the landlord has been successful in its application, it may recover the filing fee from the tenant. Pursuant to section 72(2) of the

Act, the landlord may retain $100 of security deposit in satisfaction of this monetary order. It must handle the balance of the security deposit in accordance with the Act.

Conclusion

I dismiss the Tenant's Application, without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by September 30, 2020 at 1:00 pm.

Pursuant to sections 72(1) and (2) of the Act, the landlord may retain $100 of the security deposit in satisfaction of its entitlement to recover its filing fee.

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: August 25, 2020

Residential Tenancy Branch