Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDCT, OLC, FFT

Introduction

The tenant seeks an order to cancel a One Month Notice to End Tenancy for Cause ("Notice"), a monetary order, an order that the landlord comply with the Act, and, recovery of the filing fee, pursuant to section 47, 67, 62, and 72, respectively, of the *Residential Tenancy Act* ("Act").

The tenant filed an application for dispute resolution on September 6, 2020 and a hearing was held on October 26, 2020. The tenant and landlord attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to an order that the landlord comply with the Act?
4. Is the tenant entitled to a monetary order?
5. Is the tenant entitled to recovery of the application filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application. Only relevant evidence necessary to explain my decision is referred to in this decision.

The tenancy began on November 1, 2019 and monthly rent is $1,200. The tenant paid a $625 security deposit and a $625 pet damage deposit. A copy of the written tenancy agreement is in evidence.

The landlord testified that she served the Notice on or about August 29, 2020. The Notice included three grounds on which it was served: (1) unreasonable number of occupants, (2) interference with the landlord's property, and (3) unsanitary conditions of the yard due to dog droppings.

The landlord testified that the rental unit, a basement suite, was designed and is suitable for only one occupant. There is a septic system, the landlord pays the utilities, and there is only one parking spot. The rental unit has a kitchen, a living room, a full bathroom, and one bedroom. The tenant's son moved in with the tenant on November 1, 2019 and was supposed to just stay there a few days. He did not. Rather, he ended up living in the suite until he finally moved out at the end of August 2020.

Regarding the second ground, the landlord testified that the tenant had attached a small fence to the house and that it cordons off the driveway, impeding access. She did not give the tenant permission to install the fence. The fence is attached to the house.

Regarding the third ground, the landlord testified that the tenant's dog has left, and leaves, numerous feces droppings in the backyard. The landlord has sent warning letters to the tenant about the issue. The dog droppings have "always been an issue."

In her testimony, the tenant said that her application for rental referred to the son staying temporarily with the mother, the tenant. It said temporary but did not indicate how long this would be. She also testified that nowhere in the tenancy agreement does it say that only one person can stay in the rental unit.

In February 2020, the tenant's son thought it might be good to pay the landlord for letting him stay, so he (or the tenant) paid the landlord a lump sum of $600. This was for November, December, and January, at $200 a month extra. The tenant's son, through the tenant, initiated this agreement with the landlord, who accepted.

There was some divergence between the parties' testimony surrounding the $200 monthly payment, with the tenant testifying that she "voluntarily but also had no choice" paid the $200 from March onward. She acknowledged that she did not dispute the $200 extra payment. The landlord testified that she "never, ever, asked for [extra] rent." However, the landlord asked the tenant in a text message dated March 19, 2020 "Can you handle an extra $200/month while he's here?" The tenant's response to this question is not in evidence, but the tenant began paying an extra $200.00 from then on while the son was in the suite.

The tenant seeks compensation for the additional rent that she paid from March to July 2020, arguing that it was not a proper rent increase.

Regarding the dog waster, the tenant testified that she picks up the feces every day. She said that the landlord wants it picked up every day. The landlord denies saying that, and that she simply wants it picked up immediately after the dog goes.

Analysis

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.

1. Order to Cancel the Notice

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice was issued for three reasons: (1) there are an unreasonable number of occupants in a rental unit (section 47(1)(c) of the Act); (2) the tenant has “significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property” (section 47(1)(d)(i) of the Act; and (3) the tenant has “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant” (section 47(1)(d)(ii) of the Act).

Regarding the first ground, while the landlord argued that the rental unit is not set up to accommodate more than one person, that she essentially permitted the landlord’s son to reside in the rental unit for a period of ten months, and that she demonstrated no substantial issues as a result of that occupancy, I am not persuaded that the landlord has proven there were an unreasonable number of occupants in the rental unit. Moreover, that the landlord accepted additional rent of $200 per month while the son occupied the rental unit rather weakens any argument that having one extra person in the rental unit is in fact unreasonable. Instead of acting on this additional occupancy as a true issue, the landlord continued (albeit reluctantly) to allow the son to keep staying long beyond what she originally expected. That, and she accepted additional rent.

For this reason, I do not find that the landlord has proven this first ground.

Regarding the second ground, I do not find that the tenant's attaching and installing a small fence-like structure as she has is a "significant interference" with the landlord's property. Certainly, it is an interference, and I will, at this point in the decision, order that the tenant remove the structure within two (2) days of receiving this decision. Tenants are not permitted to make structural changes or install permanent fixtures in or on common areas without a landlord's express written permission.

For this reason, however, I do not find that the landlord has proven the second ground.

Finally, regarding the third ground, I do not find that the tenant's dog's frequent excrement droppings to have "seriously jeopardized the health or safety or a lawful right or interest of the landlord." This is not to say that the tenant is not at fault for failing to clean up her dog's feces, but to say that multiple dog droppings on a lawn is somehow a serious jeopardizing of health, safety, or lawful right or interest, is an argument for which I am not persuaded. While the frequency of cleaning up was in issue in this dispute, it cannot be ignored that the tenant is, in fact, permitted by the landlord to have a dog. Droppings are going to happen, and sometimes those droppings will not always be picked up. For this reason, I do not find that the landlord has proven the third ground.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the grounds on which the Notice was issued. Accordingly, I dismiss the Notice. The tenancy shall continue until it is ended in accordance with the Act.

As an aside, however, both parties made much of the number (or existence) of warning letters. However, such letters are of little importance except when a landlord issues a notice to end tenancy under section 47(1)(h) of the Act, which refers to written notices from a landlord.

2. Claim for Compensation

The tenant argued that the additional rent of $200 she paid was not permitted under the Act. However, she agreed – that is, she did not dispute – to having to pay an extra $200 per month while her son stayed in the rental unit. The landlord texted the tenant asking if the tenant would be able to pay an extra $200. In other words, she essentially asked the tenant about whether a $200 increase in rent would be manageable. While there is no evidence of the tenant having responded to this, it can only be assumed that she did.

Or, in the alternative, that she did not object to the proposed rent increase, and implicitly acknowledged acceptance of this proposal, which was in writing.

Section 43(1)(c) of the Act states that a landlord may impose a rent increase when "agreed to by the tenant in writing."

From March 2020 onward, the tenant agreed to, and did pay, an additional $200 in rent. At no time did she object to this, and taking everything into consideration, I find that the tenant agreed to the rent increase. Indeed, that the tenant paid a $600 lump sum for previous rent (for the son's occupancy) goes to show the tenant's agreement to pay. It was only after the tenant received the Notice did she decide to pursue the landlord for the additional rent that she had otherwise, and without objection, been paying.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for compensation related to the additional $200 rent payments for the period claimed. Accordingly, this aspect of her application is dismissed, without leave to reapply.

3. Order that Landlord Comply

The tenant confirmed during the hearing that this aspect of her application was largely tied up with the application to cancel the Notice and the matters relating to the increase in rent. As those matters are dealt with elsewhere in this decision. I do not make any further findings in relation to this part of the tenant's application. This aspect of the tenant's application is, therefore, dismissed.

4. Claim for Application Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

As the tenant was successful in respect of her application to cancel the Notice, I grant her claim for reimbursement of the filing fee.

I therefore order and authorize the tenant to make a one-time deduction of $100.00 in a future payment in full satisfaction of this award.

Conclusion

I hereby cancel the Notice. It is of no force or effect and the tenancy shall continue until it is ended in accordance with the Act.

I award the tenant $100 for recovery of the application filing fee, and is subject to the deduction in a future rent payment as set out above.

The remainder of the tenant's application is dismissed, without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 26, 2020

Residential Tenancy Branch