Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]
DECISION

Dispute Code: CNC

Introduction

The tenant seeks relief under section 47(4) of the *Residential Tenancy Act* ("Act"), namely, for an order cancelling a One Month Notice to End Tenancy for Cause ("Notice"), which was issued on September 23, 2020. It should be noted that section 55 of the Act requires that when a tenant applies 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 application is dismissed and the landlord's notice to end tenancy complies with the Act.

The tenant filed an application for dispute resolution on October 1, 2020 and a hearing was held on December 8, 2020. Two representatives for the landlord attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The tenant did not attend the hearing, which commenced at 9:30 AM and ended at 9:40 AM.

The landlord's representative R.M. confirmed service of evidence on the tenant by way of Canada Post registered mail.

Issue

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The landlord's representatives (hereafter the "landlord") testified that the tenant's rental unit poses a health and safety risk to the landlord and especially to the other occupants in the 108-rental unit building. The landlord conducted a couple of recent safety inspections, one on October 8 and another on October 29, 2020, and found the rental to be overflowing with personal belongings. One of the landlords agreed with my query as to whether this was what one might call "hoarding." The landlord has previously had issues with how the tenant maintains his rental unit, and each time the tenant responded that the state of unkemptness was due to various medical and health issues. In his testimony, the landlord M.M. explained that they had tried to work with the tenant, and offered to get him assistance, to no avail.

The rental unit is in such a state that the landlord is concerned about pest control and general uncleanliness. There are smells that occasionally permeate into the hallway, which have caused neighbouring tenants concern.

Submitted into evidence were dozens of photographs taken during the above-noted inspections, and the photographs depict the state of the rental unit as described by the landlord's testimony.

The Notice, a copy of which was submitted in evidence, includes a description on page 3 which refers to a complaint from one of the building's occupants "that there are flies and a smell" coming from the rental unit. Further, the police and the resident manager "went inside the unit and they found out that flies and smell came from the garbage under the sink that was neglected to be thrown [out] by the tenant." Finally, the Notice states that the manager and the police officer "also found out that the unit unclean and full of rubbish."

While I did not hear from the tenant, as he failed to attend the hearing, there is reference in his application to him being in hospital during a certain period of time. However, based on the landlord's documentary evidence it appeared – and this was confirmed by the landlord's representatives – that the condition of the rental unit has been like this on previous occasions, and that this was not a one-time occurrence.

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.

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 included three grounds, specifically those under sections 47(1)(d)(iii), 47(1)(e)(ii), and 47(1)(h) of the Act.

First, I am not persuaded that the tenant breached section 47(1)(e)(ii) of the Act, namely, that he engaged in “illegal activity” that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property. While the rental unit may not meet health and safety standards, there is no evidence that the tenant has done anything illegal in nature. By “illegal,” I mean something akin to a provincial or federal statutory or criminal offense. As such, this ground for eviction cannot stand.

Second, as for the ground under section 47(1)(h) of the Act, while the landlord has previously issued written notices to the tenant about the condition of the rental unit, those notices are over two years old, and I cannot consider those to be written notices for the purposes of this current Notice. There is no evidence, such as a copy of a written notice, that the landlord gave to the tenant which preceded the issuing of the Notice. Having found that there is no evidence of a written notice to the tenant regarding a breach of a material term of the tenancy, I cannot find that a ground for eviction exists under section 47(1)(h) of the Act.

Third, section 47(1)(d)(iii) of the Act states that a landlord may end a tenancy by giving notice when a tenant has “put the landlord's property at significant risk”. In this dispute, the landlord’s representatives testified that the condition of the rental unit poses pest control and health and safety issues. They referenced smells in the hallway. The Notice referenced a complaint from another building occupant about the smell and the existence of flies in the hallway (which were later found in the rental unit.).

However, the evidence before me, both documentary and oral testimony, does not persuade me that the landlord’s property is at “significant” risk. While the nature of hoarding and untidy rental units has, from time to time, been found to pose a fire hazard, there is no evidence in this dispute that such a risk exists. This is not to say that such a risk does not exist, but in the absence of evidence (such as, for example, a fire department report or similar risk assessment) it would be unreasonable for me to find that the landlord’s property is at significant risk based on the tenant’s unwillingness or inability to tidy up his rental unit.

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 given. Accordingly, I grant the tenant's application and order that the Notice, issued on September 23, 2020, is hereby cancelled. The Notice is of no force or effect and the tenancy shall continue until it is ended in accordance with the Act.

That having been said, I must caution the tenant as follows: it would be both prudent and wise for the tenant to take meaningful steps, including accepting offers of assistance from the landlord, in addressing the unkempt state of the rental unit. Failure to do so may result in a condition whereby the landlord may ultimately have grounds on which to end the tenancy.

Conclusion

I grant the tenant's application and hereby order that the One Month Notice to End Tenancy issued on September 23, 2020 is cancelled.

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

Dated: December 8, 2020

Residential Tenancy Branch