



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT (Tenant)
 OPE (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed her application on January 12, 2021 (the “Tenant’s Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated January 08, 2021 (the “Notice”). The Tenant also sought reimbursement for the filing fee.

The Landlord filed his application on March 11, 2021 (the “Landlord’s Application”). The Landlord applied for an Order of Possession based on the Notice.

The Tenant appeared at the hearing with Legal Counsel. The Landlord appeared at the hearing and called the Witness during the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and Witness provided affirmed testimony.

The Landlord confirmed at the outset that he was only seeking an Order of Possession based on the Notice and nothing further in the Landlord’s Application.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package and evidence for the Tenant’s Application.

Legal Counsel advised that the Tenant did not receive the hearing package for the Landlord's Application. The Landlord acknowledged the hearing package for his application was not served on the Tenant.

Pursuant to section 59(3) of the *Residential Tenancy Act* (the "Act") and rule 3.1 of the Rules, the Landlord was required to serve the hearing package for the Landlord's Application on the Tenant. In the absence of service of the hearing package, the Landlord's Application is dismissed with leave to re-apply. However, as explained during the hearing, I will consider the validity of the Notice and whether the Landlord is entitled to an Order of Possession based on the Notice on the Tenant's Application.

Legal Counsel confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and the oral testimony of the parties and Witness. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started September 01, 2019 and is a month-to-month tenancy.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has engaged in **illegal activity** that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.

2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time **after written notice to do so.**

(emphasis added)

There was no issue that the Notice was served and received January 08, 2021.

The Landlord testified as follows in relation to the grounds for the Notice. The issue with the Tenant is noise which has become unbearable. The Witness lives above the Tenant and has complained about the noise. The Witness has had enough and has given notice ending his tenancy. The parties have attempted to resolve the situation but the resolution did not last and he continued to receive complaints about the Tenant. Police have attended the rental unit four times looking for the Tenant or Tenant's boyfriend. He feels unsafe.

I asked the Landlord what the illegal activity being alleged is and the Landlord said he does not think there has been illegal activity. The Landlord said it is more about peace and quiet.

The Landlord submitted that the Tenant has breached term 13 of the tenancy agreement. The Landlord submitted that all of the terms in the tenancy agreement are material terms. I asked the Landlord if he provided the Tenant a breach letter as outlined in Policy Guideline 8 and the Landlord advised he had not done so.

The Witness testified about leaving the rental unit building due to the noise from the Tenant. The Witness testified about the Tenant "trash talking" the Landlord. The Witness testified about the Tenant treating his guests poorly. The Witness testified about police knocking on his door looking for the Tenant. In reply to a question by Legal Counsel, the Witness testified that he is aware of the Tenant making complaints about his noise levels.

Legal Counsel for the Tenant made the following submissions. The Landlord acknowledged there has been no illegal activity. The Landlord has not been able to identify a material term that has been breached and acknowledged that a breach letter has not been sent to the Tenant. The Tenant has not received a breach letter. The Tenant disputes the evidence of the Witness. The Tenant and Witness have had noise issues with each other because there is not enough insulation between their units. There was a previous hearing that dealt with the issue of the Tenant having guests.

In reply, the Landlord testified that he has not had noise complaint issues in the rental unit building for 40 years.

Analysis

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(e) the tenant or a person permitted on the residential property by the tenant has engaged in **illegal activity** that...

(i) 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...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time **after the landlord gives written notice to do so;**

(emphasis added)

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*. There was no issue that the Tenant received the Notice January 08, 2021. The Application was filed January 12, 2021, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

In relation to the first ground for the Notice, the Landlord did not point to any illegal activity and said he does not think there has been illegal activity. Given this, the Landlord has failed to prove the Tenant or a person permitted on the residential property by the Tenant 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 as alleged in the Notice.

In relation to the second ground for the Notice, Policy Guideline 8 deals with material terms in a tenancy agreement and states at page two:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement², and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I read out the above requirement to the Landlord during the hearing and the Landlord acknowledged a breach letter was not provided to the Tenant. Legal Counsel for the Tenant advised that a breach letter was not provided to the Tenant. Providing a breach letter to the Tenant was a precondition to issuing the Notice based on a breach of a material term as is clear from the Notice, section 47(1)(h)(ii) of the *Act* and Policy Guideline 8. I am not satisfied a breach letter was provided to the Tenant because the parties agree a breach letter was not provided to the Tenant. In the absence of a breach letter, the Landlord did not have grounds to issue the Notice for a breach of a material term.

Given the above, the Landlord has failed to prove either ground for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant is permitted to deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is awarded reimbursement for the \$100.00 filing fee. The Tenant is permitted to deduct \$100.00 from one future rent payment as reimbursement for the 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 *Act*.

Dated: April 12, 2021

Residential Tenancy Branch