

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under the *Act* for:

- an Order of possession pursuant to the Landlord's One Month Notice under section 47 of the Act

Tenant LW and advocate SM attended the hearing for the Tenant.

GA and SR attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord SR was served on March 12th, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service, and the Landlord acknowledged such service.

I find that the Tenant LW was served on March 26th, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service, and the Tenant acknowledged such service.

Issues to be Decided

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on March 1st, 2017, with a monthly rent of \$435.00, due on the first of each month, with a security deposit in the amount of \$200.00.

GA testified that the Landlord is a non-profit, and that the Tenant is a resident in a low-income senior's housing property.

SR testified that the Tenant has caused the damage to the unit by allowing other people to store things in the rental unit, creating a "hot box" where condensation and a lack of airflow has caused the ceiling texture to peel down. GA testified that the Tenant had allowed others' belongings to nearly fill the room, jammed against walls and piled high to the ceiling; but that this excess material had been removed periodically.

The Landlord testified that the building, of cinderblock and concrete construction, dates from 1970-71, and that the ceiling texture, a material resembling plaster applied to the concrete ceiling, dates from that time.

The Landlord testified that the peeling of the ceiling was discovered by contractors for BC Housing, who entered the unit to replace some windows, on February 29th, 2024.

The Landlord submitted photos of the Tenant's room showing the ceiling texture significantly peeling at the edges of the ceiling. The photographs also showed some black patches indicative of mould in a corner of the room, but did not show a room overstuffed with belongings.

The Landlord also submitted into evidence a hazardous materials report for the rental property, which indicates that the ceiling texture, tested from other areas of the building, contains 1-5% asbestos.

The Tenant's advocate testified that the Tenant is a First Nations elder, and that he suffers from poor health, including cancer. As a result of this, it is painful for the Tenant to speak.

SM testified that the Tenant needs regular assistance, and that CM, one of his closest friends, helps him most days. SM testified that CM had not stayed with the Tenant in the rental unit since 2020. SM testified that, to his personal knowledge, CM lives elsewhere, and that he has been to CM's residence.

Analysis

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenant disputed this notice on March 6th, 2024 and since I have found that the One Month Notice was served to the Tenant on February 29th, 2024, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

The Landlord cites three bases for the eviction of the Tenant on the One Month Notice: that the Tenant has allowed an unreasonable number of occupants in the rental unit; that the Tenant has put the landlord's property at significant risk; and that the Tenant has seriously jeopardized the health, safety or lawful right of another occupant of the rental property or the landlord.

There was conflicting evidence as to whether a second individual lives in the Tenant's small apartment. This is not a question of whether the Tenant is permitted to allow such an occupant under his tenancy agreement. It is not uncommon for two people to reside even in a small apartment. I find that the Landlord has not met their burden of proving either that the second person does reside in the rental unit, or that a dual occupancy would be unreasonable.

With respect to the claim that the tenant has put the Landlord's property at risk, there is no evidence that the Tenant's actions have caused structural damage to the property. Placing the property at significant risk goes beyond even significant damage to a rental unit – it is activity that puts the property itself at significant risk. Such a threat will often be structural or related to a threat of fire. I cannot find that the Tenant has placed the Landlord's property at significant risk.

The remaining basis is that the Tenant has seriously jeopardized the health, safety or lawful right of another occupant of the rental property or the landlord. The submissions of the Landlord centred on the first prong, that of a threat to the health caused by asbestos. I first note that a threat to the health of the Tenant himself is not a reason for

an eviction under this heading. While I accept that asbestos is notoriously a health risk, I have no evidence that the peeling of the ceiling texture in the Tenant's rental unit is a significant threat to the health of people outside the rental unit; nor that other occupants of the rental property enter the Tenant's unit. SR did submit the Landlord performs periodic inspections of rental units, but the Landlord did not submit evidence that any threat to the health of the Landlord's employees or agents could not be effectively dealt with by the use of protective equipment when an inspection is undertaken, if the Landlord deems such measures necessary. I therefore find that the Landlord has not demonstrated that the Tenant seriously jeopardized the health, safety or lawful right of another occupant or the Landlord.

Therefore, the Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of February 29th, 2024 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of February 29th, 2024 is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

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: May 14, 2024

Residential Tenancy Branch