



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC, OLC, RP, FF

Introduction

This is an Application for Dispute Resolution by the tenant to cancel the One-Month Notice to End Tenancy for Cause dated May 30, 2009. Both tenants and the landlord appeared and each gave testimony in turn. Counsel for the landlord also appeared.

Issue(s) to be Decided

The tenant was disputing the basis for the One-Month Notice and was also seeking an order to force the landlord to comply with *Residential Tenancy Act*, (the *Act*), and to complete repairs on the unit. The issues to be determined based on the testimony and the evidence were:

- Whether the criteria to support a One-Month Notice to End Tenancy under section 47 of the *Act*, has been established by the landlord or whether the notice should be cancelled.
- Whether the landlord was in violation of the *Act* by imposing a rent premium for the tenant's pets and should be ordered to repay.
- Whether the landlord should be ordered to complete repairs pursuant to the landlord's obligation under section 32 of the *Act*.

Burden of Proof: The burden of proof is on the landlord to establish that the One Month Notice was justified. The tenant must prove the remainder of the claims.

Background and Evidence

The landlord testified that the tenancy began in April 2009 with rent set at \$1,795.00 with a term in the tenancy agreement that gave the tenant a “*rebate of \$100.00 for rent received in full on the first of the month*”. A security deposit of \$850.00 was paid and on April 14, 2009, a pet damage deposit was paid in the amount of \$850.00 on demand by the landlord. The landlord testified that the tenant’s conduct unreasonably disturbed the landlord and other occupants and the landlord issued a One-Month Notice to End Tenancy for Cause based on the following grounds:

- the tenant or a person permitted on the residential property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - the tenant or a person permitted on the residential property by the tenant has 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, or
- the tenant has assigned the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent

The landlord testified that, although the One-Month Notice shows that it was signed and dated on May 30, 2009, it was actually issued at an earlier date and the date shown on the notice was due to a typographical error which should not invalidate the Notice. The landlord was prepared to give detailed testimony and present the evidence, which was to include a daily chronology of the tenant’s alleged offences, written complaints about the

tenant, witness testimony, a warning letter dated April 14, 2009, several photographs and a copy of a move-in inspection report conducted two months after the tenancy began.

The landlord testified that the tenant failed to pay rent for the month of June 2009 and the landlord had recently issued a Ten-Day Notice to End Tenancy for Unpaid Rent, which was not part of the dispute before me.

In the course of the landlord's testimony about the tenant's conduct, a discussion was held regarding the issue of the validity of the One-Month Notice with the incorrect date and I found that it was necessary to hold my decision in abeyance until I made a determination of whether or not, under the Act, I had the authority to amend or permit the amendment of the issue date of the Notice after-the-fact for the purpose of enforcing the Notice.

The tenant testified that the flawed Notice should be found to be invalid.

There was a discussion about what impact this finding would have on the tenancy and the claims before me or those likely to develop in future. As the tenant acknowledged that the tenant did not currently have the funds to pay the still outstanding rent for the month of June 2009, it was evident that this tenancy was likely to end in the near future regardless of whether or not the One-Month Notice to End Tenancy was found to be un-enforceable.

The tenant testified that the landlord had charged a premium of \$100.00 per month for the tenant's two cats, which was not permitted under the Act. The tenant testified that at one point during this brief tenancy the landlord had shown a willingness to help pay for a moving truck. A mediated discussion ensued, the outcome of which was:

- The tenant shall be reimbursed \$250.00 by the landlord, at the end of the tenancy, an amalgamated amount representing a refund of the charge for the cats and assistance with moving.

- The landlord shall retain the tenant's security deposit of \$850.00 and pet damage deposit of \$850.00 as payment in full for rent owed by the tenant for the month of June 2009.
- An Order of Possession will be granted to the landlord effective July 1, 2009 at twelve o'clock noon.
- The tenant agreed to leave the unit in the same clean condition as when the tenancy began.
- The landlord agreed to provide a reference to try and highlight the positive aspects of the tenancy, such as the tenant's willingness to cooperate in finding this solution.

Conclusion

Based on the mutual agreement reached by these parties, I hereby issue an Order of Possession in favour of the landlord. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I also issue a monetary Order in favour of the tenant in the amount of \$250.00 payable on the final day of the tenancy. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Finally, I order that the landlord retain the security and pet damage deposits in full in satisfaction of rent owed by the tenant for the month of June 2009.

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

June 2009

Date of Decision

Dispute Resolution Officer