



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, OLC, PSF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package in person on June 5, 2017. Both parties confirmed that no documentary evidence was submitted. Neither party raised any service issue(s). I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

During the hearing the tenant was unable to articulate or provide sufficient details of what his request for the landlord to comply with the Act, regulations or tenancy agreement (OLC) would be. As such, this portion of the tenant's application is dismissed. As well, the tenant has referred to a request for the landlord to service the heater, but did not at any time notify or communicate this request to the landlord. As such, I find that the tenant must provide the landlord an opportunity to resolve any possible maintenance issues and as such dismiss this portion of the tenant's application with leave to reapply as I find it premature.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Neither party provided any documentary evidence which also includes the 1 Month Notice in dispute. However, both parties have agreed that on May 28, 2017 the landlord served the tenant with the 1 Month Notice dated May 28, 2017 in person. The 1 Month Notice sets out an effective end of tenancy date of June 30, 2017 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - put the landlord's property at significant risk.

The landlord claims that the tenant in a dispute with the gas company has allowed the gas to be turned off. The landlord states that this puts his property at risk for possible freezing of the water pipes and any subsequent damage. The landlord state that he first noticed the lack of heat approximately 15 months ago (last winter) and that subsequent arrangement with the tenant to use electric heat in the basement were inadequate. The landlord states that he informed the tenant that gas heat needed to be reinstated to protect the property for which the landlord claims the tenant had refused due to the high cost of gas. The landlord states that as a result of the tenant's refusal, he issued the 1 Month Notice.

The tenant confirms that gas was turned off by the gas company as a result of his dispute with the high cost of gas in heating the property. The tenant disputes the landlord's claim that he refused to arrange to have it turned back on when the landlord notified him that electric heat was not adequate.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed evidence of both parties that the landlord served the 1 Month Notice in person to the tenant on May 28, 2017.

Both parties have provided conflicting and contradictory testimony regarding the landlord's claim that the tenant refused to arrange to turn on the gas to the property. The landlord has claimed that a request was made to the tenant to turn on the gas to

provide basic heat to the property as electric heat was not adequate to maintain the property. The tenant has disputed this claim stating that he would look into the re-activation of the gas, but was served with the 1 Month Notice immediately following this request.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the burden lies with the landlord to prove on a balance of probabilities that the tenant refused to re-activate the gas to safeguard the property. I find that the landlord has failed to provide sufficient evidence to satisfy me that proper notification to the tenant was made in his request to turn on the gas and that the tenant refused placing his property at significant risk.

The tenant's application to cancel the 1 Month Notice dated May 28, 2017 is granted. The 1 Month Notice is set aside. The tenancy shall continue.

I find that the tenant having been partially successful is only entitled to recovery of \$50.00 for the filing fee.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. The tenancy shall continue.

The tenant having been granted recovery of \$50.00 for the filing fee is authorized to withhold one-time \$50.00 from the next month's rent upon receipt of this decision.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 01, 2017

Residential Tenancy Branch