



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC ERP OLC PSF RP FF

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated July 7, 2017 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated June 30, 2017 (the "One Month Notice");
- an order requiring the Landlord to make emergency repairs for health of safety reasons;
- an order that the Landlord comply with the *Act*, regulation and/or the tenancy agreement;
- an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order that the Landlord make repairs to the unit, site, or property; and
- an order granting recovery of the filing fee.

The Tenant testified the Application package was served on the Landlord by registered mail on July 8, 2017. The Landlord acknowledged receipt. In addition, the Tenant testified that a subsequent documentary evidence package was served on the Tenant by registered mail. The Tenant acknowledged receipt on September 6, 2017.

The Landlord submitted documentary evidence in response to the Application, which was received at the Residential Tenancy Branch on August 25, 2017. The Landlord testified it was served on the Tenant in person on August 25, 2017, with a witness present. The witness did not attend the hearing to provide evidence of service. The Tenant denied receiving the documentary evidence submitted by the Landlord. I find there is insufficient evidence before me to conclude the Landlord's documentary evidence was served on and received by the Tenant as claimed. Accordingly, it has not been considered further in this Decision. However, the Landlord did submit a copy of

the disputed One Month Notice, which has been referred to in this Decision. I find there is no prejudice to the Tenant by doing so as her Application confirms receipt of it.

Subject to my finding above concerning the Landlord's documentary evidence, the parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address during this hearing was whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request to cancel the One Month Notice and to recover the filing fee paid to make the Application. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date.

Issues to be Determined

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord provided testimony concerning the reasons for issuing the One Month Notice. First, he stated the Tenant operates an electric fireplace in the rental unit and that this puts a strain on the electrical panel. He also testified to his belief the electric fireplace is a fire hazard. The Landlord testified that he saw the electric fireplace in use in or about January 2017, and that an electrician who attended the rental property at about the same time advised that the electric fireplace is a problem.

Second, the Landlord testified the Tenant is repeatedly late paying rent. Specifically, he stated rent was paid late on May 15, June 11, and July 3.

Third, the Landlord stated that the Tenant used an air conditioner in the rental unit without permission. He stated this is a problem because electricity is included in the rent.

In reply, the Tenant testified that the electric fireplace does not work and is not being used. With respect to the Landlord's suggestion that the Tenant needed permission to use the air conditioner because electricity is included in rent, the Tenant stated there is no evidence to support this claim. The Tenant also testified that there are three units in the rental property, all of which run on the same electrical system, and suggested this situation has caused power outages.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for the reasons listed therein. In this case, the Landlord issued the One Month Notice on the bases that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the property at significant risk. Specifically, the Landlord testified that the Tenant's electrical fire and air conditioning unit place an undue strain on the electrical system, and that the electric fireplace poses a fire risk. He also testified that the Tenant is repeatedly late paying rent. The Tenant testified that the electric fireplace is broken, and that she does not require permission to use the air conditioner despite any additional electrical consumption. She also raised an issue with the number of suites in the rental property, suggesting there are too many occupants for the electrical system.

Taken as a whole, I find there is insufficient evidence before me to uphold the One Month Notice. Accordingly, the Tenant's Application is successful and the One Month Notice is cancelled. The Tenancy will continue until otherwise ended in accordance with the *Act*.

As the Tenant has been successful, I find she is entitled to recovery the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment, at the Tenant's discretion.

Conclusion

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant is granted leave to reapply for the remainder of the relief sought (ERP, OLC, PSF, RP), as described in *Preliminary and Procedural Matters*, above.

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: September 19, 2017

Residential Tenancy Branch