



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated November 22, 2017 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the respondent landlord attended the hearing by way of conference call, the applicant tenant did not, although I waited until 11:29 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord confirmed that she sent her written evidence package to the tenant by way of registered mail on January 29, 2018. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence package on February 3, 2018, five days after its registered mailing.

Rule 3.15 of the RTB *Rules of Procedure* requires the landlord, as the respondent, to submit her evidence at least seven days prior to the hearing date, not including the service or hearing dates. During the hearing, I notified the landlord that I could not consider her written evidence package at this hearing or in my decision because it was deemed received by the tenant late, less than seven days prior to this hearing. I considered Rule 3.17 of the RTB *Rules of Procedure* before making my decision. I find

that the landlord had ample time to submit this evidence on time, given that the tenant filed his application on November 24, 2017 and the hearing occurred on February 9, 2018, approximately 2.5 months later. The tenant was not present at the hearing to confirm receipt of the evidence or to respond to it. Accordingly, I find that it would be prejudicial to the tenant if I considered the landlord's late written evidence.

The landlord stated that the tenant was served with the landlord's 1 Month Notice on November 22, 2017, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. The tenant disputed the 1 Month Notice in this application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on November 27, 2017, five days after its registered mailing.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 1 Month Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on March 1, 2011 for a fixed term ending on August 31, 2011 after which it became a month-to-month tenancy. Monthly rent in the current amount of \$946.47 is payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The rental unit is a two-bedroom, one-bathroom apartment of approximately 915 square feet.

The landlord issued the 1 Month Notice with an effective date of December 31, 2017, for the following reason:

- *Tenant has allowed an unreasonable number of occupants in the unit/site.*

The landlord testified that the tenant's written tenancy agreement indicates that the tenant is only permitted to reside in the rental unit alone. She said that tradespeople informed her that the tenant is residing in the rental unit with one other person. She claimed that this has been ongoing for three months, the tenant lied and never informed her about it and he should be paying more rent for an extra person. The tenant's application indicates that his wife is living with him in the unit.

The landlord said that she reduced the rent for the tenant because he was living alone, that the tenant refused to negotiate a new tenancy agreement to add the other person living there, and the tenant agreed to pay a higher rent but has not done so. She explained that there is more wear and tear with another person in the unit. She maintained that she cannot afford her mortgage now because she is paying \$5,000.00 to \$6,000.00 per year since the tenant's rent does not cover her mortgage and she is considering selling the rental unit because of it. She said that the tenant is paying rent below market value of \$1,600.00 to \$1,800.00 in the area. She stated that the tenant has another bed and mattress in the second bedroom of the unit but the tenant said no one else was living there. She claimed that she does not have proof of anyone else living there besides the tenant and one other person.

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the

tenant is deemed to have received the 1 Month Notice on November 27, 2017, and filed his application to dispute it on November 24, 2017. Accordingly, I find that the tenant's application was filed within the ten day limit under the *Act*.

Where a tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord did not issue the 1 Month Notice for a valid reason and therefore, the landlord is not entitled to an order of possession, despite the fact that I have dismissed the tenant's application to cancel the notice. Section 55 of the *Act* states that I must issue an order of possession only if the 1 Month Notice complies with section 52 of the *Act*.

Section 52(d) of the *Act* states that a notice to end tenancy must state the grounds for ending the tenancy. In this case, the landlord indicated that the tenant had an unreasonable number of occupants in the rental unit.

Section 47(1)(c) states the following (my emphasis added):

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

(c) there are an unreasonable number of occupants in a rental unit;

I find that the tenant did not have an unreasonable number of occupants in the rental unit and therefore, section 47 of the *Act* does not apply.

I find that the landlord failed to show how one extra person is an unreasonable number of occupants in the rental unit. This is a two-bedroom rental unit of approximately 915 square feet, as per the landlord's testimony. It is reasonable that two people can be accommodated in this rental unit. I do not find one additional person to be an "unreasonable" number. The landlord agreed in her testimony during the hearing, that it was not unreasonable for two people to live in the two-bedroom rental unit. She said that she wanted to be compensated for the extra person and the tenant should be paying extra rent, which is irrelevant to this application.

I find that the landlord did not provide sufficient proof that anyone else is living in the rental unit besides the tenant and one other person.

Accordingly, the landlord's 1 Month Notice, dated November 22, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord's 1 Month Notice, dated November 22, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. 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 *Residential Tenancy Act*.

Dated: February 09, 2018

Residential Tenancy Branch