



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenants' 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; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenants confirmed that they were handed the landlord's 1 Month Notice on December 31, 2017, I find that this Notice was duly served to the tenants in accordance with section 88 of the *Act*.

As the landlord confirmed that he received a copy of the tenants' dispute resolution hearing package on or about January 9, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Both parties also confirmed that they had received one another's written evidence.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued with respect to this tenancy?

Background and Evidence

This tenancy for the lower level of a two unit rental property commenced by way of a three-month fixed term tenancy agreement that started on May 1, 2017. At the expiration of the initial fixed term, the tenancy continued on a month-to-month basis. Monthly rent is set at \$1,100.00, payable in advance on the first of each month, with the tenants responsible for 40% of the utility costs. The landlord continues to hold an \$1,100.00 security deposit paid by the tenants at the start of this tenancy.

The tenants entered written evidence that the landlord first attempted to end their tenancy for cause on November 20, 2017, by way of a notice of the landlord's own creation and not on the required Residential Tenancy Branch (RTB) form. Although the landlord's subsequent 1 Month Notice was issued on the correct RTB form, the landlord neither dated that 1 Month Notice nor identified an effective date whereby the tenancy was to end.

In the written evidence provided by the parties, there were references to problems that arose as a result of some of the landlord's monthly inspections. The tenancy agreement signed by the parties at the beginning of this tenancy specified that monthly inspections by the landlord would occur at the time that the tenants' rent was collected. The landlord testified that on a number of occasions, the landlord was not given access to one of the tenants' bedrooms, raising concerns on his part as to what was contained therein.

At the hearing, one of the tenants, TM, also testified that the tenants have been subjected to harassment by the landlord and that there had been a loss of quiet enjoyment in this tenancy. I noted that this had not been part of the tenants' application and that they had not properly alerted the landlord that they intended to pursue anything related to this issue at this hearing. The tenants said that they understood this, and were not expecting that any type of determination could be made with respect to this matter at this time.

Analysis

Section 47 of the *Act* establishes the basis for a landlord's issuance of a 1 Month Notice for cause. Section 47(3) of the *Act* requires that "a notice under this section must comply with section 52 [form and content of notice to end tenancy]." Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form...*

As discussed at this hearing, the landlord's 1 Month Notice was undated and did not state an effective date by which the tenants would be required to vacate the rental unit. Since the landlord's 1 Month Notice was missing critical elements required by section 52 of the *Act*, I advised the parties at the hearing that there was no point in proceeding with a consideration of the merits of the landlord's 1 Month Notice. As the landlord's 1 Month Notice served to the tenants on December 31, 2017 did not comply with the requirements of section 52 of the *Act*, I advised them that I would be allowing the tenants' application to cancel the 1 Month Notice.

As a result of the tenants' application, it became apparent that the landlord had not complied with the provisions of section 19 of the *Act*, limiting the amount of a security deposit to one-half of the monthly rent. As the landlord incorrectly charged the tenants \$1,100.00 as a security deposit instead of the maximum \$550.00 that was allowed, I find that the tenants are entitled to a recovery of that amount from the landlord. Since this tenancy is continuing, I order the tenants to withhold \$550.00 from their next scheduled rent payment that becomes due on March 1, 2018. This is a one-time rent reduction; their rent reverts to \$1,100.00 as of April 1, 2018 in accordance with their tenancy agreement.

As this tenancy is continuing, I also have taken into account the landlord's assertion that the tenants have been unwilling on occasion to allow the landlord to inspect every room of the rental unit on occasion. For clarity's sake, I order the tenants to comply with the requirement established under the *Act* that the landlord be given complete access to all areas of their rental unit when conducting the monthly inspection they agreed to allow the landlord to undertake as part of their tenancy agreement. According to the terms of their tenancy agreement, this inspection was to occur at the time of the payment of the tenants' rent. Alternatively, the landlord could request an inspection no more frequently than every 30 days after the landlord has provided the tenants with a written notice to inspect the rental unit.

Conclusion

I allow the tenants' application to cancel the landlord's 1 Month Notice of December 31, 2017. The landlord's 1 Month Notice is set aside and this tenancy continues until ended in accordance with the *Act*.

I order the tenants to withhold \$550.00 from their next scheduled rent payment that becomes due on March 1, 2018. This is a one-time rent reduction due to the landlord's overcharging of that amount on the security deposit for this tenancy. In the event that this tenancy is still in effect by April 1, the monthly rent for this tenancy reverts to \$1,100.00 as of April 1, 2018 in accordance with their tenancy agreement.

I order the tenants to provide full access to all parts of their rental unit to the landlord during the landlord's monthly inspections of their premises. These inspections may be undertaken at the time of the tenants' rent payment, as is set out in their tenancy agreement, or alternatively at a time identified by the landlord upon written notice to the tenants, but not more frequently than every 30 days.

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