



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC
 OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and two Amendments to an Application for Dispute Resolution (the “Amendments”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement.

This hearing also dealt with a cross-application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession and the recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), the Tenant and the Tenant’s advocate (the “Advocate”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns about the service of the Applications, Amendments, or documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties copies of the decision will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

The Tenant sought both an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement and the cancellation of the One Month Notice. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue and I find that the other claim by the Tenant is not sufficiently related to the continuation of the tenancy, I exercise my discretion to dismiss the Tenants claim for an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement with leave to re-apply.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Landlord entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Landlord testified that the Tenant requested permission to add her boyfriend to the rental unit, which was denied due to the small size of the bachelor suite. The Landlord stated that after this denial, the Tenant's boyfriend was spotted on the property and a Two Month Notice was served as it was suspected that the Tenant's boyfriend had become an occupant of the rental unit.

The One Month Notice in the documentary evidence before me, dated February 26, 2018, has an effective vacancy date of March 31, 2018, and states that the reason for ending the tenancy is because the Tenant has permitted an unreasonable number of occupants in the rental unit and because the Tenant has breached a material term of the tenancy agreement and has not corrected the breach within a reasonable amount of time after being given written notice to do so. In the hearing the Tenant acknowledged receipt of the One Month Notice on February 26, 2018.

Although both parties provided significant testimony and documentary evidence in relation to the One Month Notice, ultimately the parties agreed that there is no evidence that the Tenant's boyfriend, who is the alleged additional occupant, continues to reside in the rental unit or that he resided there for more than 11 days. The Tenant argued that her boyfriend was therefore a guest, not an additional occupant, and that as a result, she has neither permitted an unreasonable number of occupants in the rental unit nor breached a material term of the tenancy agreement. The Agent stated that at the time the One Month Notice was served, they believed the grounds to be accurate, however, he acknowledged that he has no evidence to establish or suggest that the Tenant's boyfriend resided in the rental unit for longer than 11 days and agreed that it appears that the Tenant has not permitted an unreasonable number of occupants in the rental unit or breached a material term of the tenancy agreement.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the One Month Notice on February 26, 2018, the date she acknowledged receipt.

Section 47 of the *Act* states that a landlord may end a tenancy if there are an unreasonable number of occupants in the rental unit or the tenant has breached a material term of the tenancy agreement and has not corrected the breach within a reasonable amount of time after being given written notice to do so. However, the ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove they had sufficient cause under the *Act* to issue the notice. Having carefully reviewed the evidence before me from both parties, I find that for the following reasons the Landlord has failed to establish, on a balance of probabilities, that they had cause to end the tenancy under section 47 of the *Act*.

The Tenant testified that there was never another occupant in her rental unit and that her guest only ever stayed for 11 days. The Agent agreed in the hearing that he could not provide any evidence to suggest that the Tenant's guest in fact stayed more than 11 days or would in any other way qualify as an additional occupant. As a result, I find that the Agent has failed to satisfy me, on a balance of probabilities, that there are an unreasonable number of occupants in the rental unit. As the unreasonable number of occupants formed the basis for the Landlord's claim that the Tenant had also breached a material term of the tenancy agreement, I also find that the Agent has failed to satisfy me, on a balance of probabilities, that the Tenant breached a material term of the tenancy agreement.

Based on the above, I dismiss the Landlord's Application seeking an Order of Possession based on the One Month Notice without leave to reapply and I order that the One Month Notice be cancelled. As a result, the tenancy will continue in full force and effect until it is ended in accordance with the *Act*.

As the Landlord was unsuccessful in their Application, I decline to grant the Landlord recovery of the filing fee.

Conclusion

I order that the One Month Notice be cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

The Landlord's Application is dismissed without leave to reapply.

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: April 4, 2018

Residential Tenancy Branch