



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the *Act*") for an order as follows:

- to cancel a One Month Notice to End Tenancy given for Cause ("the Notice") pursuant to section 47 of the *Act*.
- repayment of the application fee by the landlord pursuant to section 72 (1) of the *Act*

The landlord confirmed receipt of the tenant's application for dispute resolution and evidence within the time prescribed by section 59 (3) of the *Act*. Both parties confirmed receipt of the packages of evidence filed by the other and, that they had adequate time to review and respond.

Both the tenant and the landlord appeared at the hearing. All parties present were given a full opportunity to be heard, to present their affirmed testimony and to make submissions. The tenant gave affirmed testimony as did the landlord.

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the landlord's One Month Notice to End Tenancy, pursuant to Section 47 (4) of the *Act*?

Is the tenant entitled to recover his fling fee pursuant to section 72 (1) of the *Act*?

Should the tenant be unsuccessful in seeking to cancel the One Month Notice to End Tenancy for Landlord's Use of Property is the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence, including any and all reports, photographs, diagrams, miscellaneous documents, letters, e-mails, and also the testimony of the parties, not all details of the evidence or the parties' respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

There is no written tenancy agreement. The parties agreed in their oral evidence that the tenancy started on April 4, 2017, on a month to month basis (the "Agreement"). The Agreement originally provided that monthly rent was payable by the tenant at \$500.00 per month, on the first day of the month. This was increased on the consent of the parties to \$600.00 per month as of September 2017. The tenant also pays monthly towards hydro fees.

The landlord sets out two basic complaints in the Notice: damage to a pull-out couch caused by the tenant's dogs and; damage to water pipes caused by the tenant failing to properly heat the cabin during the winter.

The landlord issued the Notice seeking to end the tenancy based on sections 47 (1) (e), (f) and (g) of the *Act*. She confirmed in her evidence that she was really simply concerned about damage to her property and was not in fact alleging any illegal activity by the tenant. The Notice was issued on April 12, 2018 with an effective vacancy date of May 31, 2018.

The Notice is dated April 12, 2018, and was served on the tenant via registered mail on April 12, 2018. The tenant admits to receiving the Notice on April 19, 2018. The tenant made his Application for Dispute Resolution on April 27, 2018, some 8 days after receiving the Notice.

The tenant brought the Application for Dispute Resolution dated Application on April 27, 2018. The basis of the tenant's application is that he denies conducting any illegal activity or having done anything to damage the landlord's property.

In her evidence the landlord was candid and admitted that she had no direct knowledge of any damage to the couch or to the water pipes and was relying on what the tenant had told her had happened.

In his evidence the tenant denied that there was any damage to the landlord's pull-out couch and stated that this remains in storage where it has been the entire time. The tenant admits that one PVC pipe that runs from the kitchen sink to the outside was frozen and damaged due to extreme cold last winter and remains unrepaired. He confirms that this does not prevent him from using the kitchen sink and that the gray water is still properly draining outside. He states that at all times the premises were properly heated.

Analysis

Based on the undisputed testimony and documentary evidence I find that the tenant was properly served with the Notice and, I find that the Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice 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.

A landlord may end a tenancy for cause pursuant to section 47 of the *Act* if any of the reasons cited in the One Month Notice are valid. The landlord was unable to adduce any direct evidence that the tenant has done or omitted to do anything that would fall within any of the causes as set out in section 47 of the *Act*. The tenant specifically denied that he had done or omitted to do anything that would fall within any of the causes as set out in section 47 of the *Act*.

In order to make a claim for an Order of possession based on allegations of damage to property or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party.

I find, on a balance of probabilities, that the tenant has not engaged in any activity that has damaged the property of the landlord; that the landlord has not established cause

for ending this tenancy; and that the One Month Notice to End Tenancy for Cause dated April 12, 2018, is invalid.

This tenancy shall continue until it is ended in accordance with the *Act*.

As the tenant has been successful in this application, I allow him to recover the \$100.00 filing fee for this application from the landlord.

Conclusion

The tenant was successful in his application to cancel the landlord's One Month Notice and accordingly, this tenancy shall continue until it is ended in accordance with the *Act*.

The tenant shall be entitled to recover the \$100.00 filing fee for this application from the landlord and, may deduct this amount from any rent owing.

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: June 6, 2018

Residential Tenancy Branch