



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

This hearing dealt with the tenant's 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;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Due to a language barrier, an assistant and advocate assisted the landlord throughout the hearing. At times, the advocate spoke on behalf of the landlord therefore I refer to the advocate throughout the decision as the "landlord."

At the outset of the hearing, the landlord confirmed that she had received the tenant's application, evidence and amendment. The landlord confirmed that she did not submit any documentary evidence for this hearing. As the landlord did not raise any issues regarding service of the application, evidence or amendment, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Sever

With respect to the tenant's monetary claim, I find that Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution hearing, if the arbitrator determines it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

I find the most pressing matter in the tenant's application is the request to cancel the 1 Month Notice. Because the tenant's claim for monetary compensation is made under section 67 of the *Act*, I find this part of the application is distinct from the tenant's request that the 1 Month Notice, be canceled pursuant to section 47 of the *Act*.

Accordingly I find the monetary portion of the tenant's application must be severed and the monetary claim must be dealt with separately through an application under 67 of the *Act*. Therefore the portion of the tenant's application seeking a monetary order is dismissed with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice set aside? If not, is the landlord entitled to an order of possession?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord and tenant testified that this tenancy began five to six years ago on a month-to-month basis. The parties agreed a written tenancy agreement exists; however neither had it before them in the hearing or provided a copy to the branch. The landlord resides upstairs, while the tenant resides in one of three rental units below. Rent in the amount of \$760.00 is payable on the first of each month. The tenant remitted a security deposit at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated September 4, 2018. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant

- the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord

In regards to the first ground, the landlord testified that the tenant has engaged in “fights” with the other tenants, has “pushed” the landlord and sworn at the landlord. The landlord contends that the tenant put the property at risk when he had a fire in the unit during the summer months. The landlord could not specify the illegal activity the tenant has engaged in, but described people coming and going, an odour emanating from the unit and an abundance of active electrical cords in the unit. The landlord testified that smoking is not permitted in the unit and at times smoke can be smelled from the unit. In closing, the landlord’s assistant indicated that the landlord is seeking to end all tenancies in the lower suites as the landlord is elderly and no longer wants the responsibility of being a landlord.

In reply, the tenant testified that he has not been involved in fights with the other tenants, “pushed” the landlord or sworn at her. The tenant acknowledges placing a gentle hand on the landlord but this was done to assist her out of his unit and on the stairs. The tenant testified that he does not know about any fire in his unit. As far as the people coming and going, the tenant has “no clue” what this is about. The tenant acknowledged using one electrical cord for his cordless phone but denies use of an excessive number of electrical cords. The tenant testified that he does not smoke in his unit, instead he smokes outside.

Analysis

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant. When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not meet the burden and the claim fails.

In the absence of specific dates of the alleged incidents or witness testimony attesting to the claims presented by the landlord, I find the landlord has failed to establish the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord or has put the landlord’s property at significant risk. In regards to the ground of illegal activity, I find the landlord has failed to establish the tenant has engaged in illegal activity, a serious violation of federal, provincial or municipal law.

Overall, I find the landlord has failed to meet her burden in proving the reasons behind the notice. Consequently, the tenant's application to cancel the 1 Month Notice is upheld.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

The tenant's monetary claim is dismissed with leave to reapply.

The tenant is entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover the filing fee.

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: October 29, 2018

Residential Tenancy Branch