



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package in person on August 6, 2018. The landlord confirmed receipt of the dispute resolution package in person on August 6, 2018. I find that the landlord was served with this package on August 6, 2018, in accordance with section 89 of the *Act*.

At the beginning of the hearing the tenant testified that he usually goes by his middle name which was not included in the dispute resolution application. I amended the tenant's application to include his middle name, pursuant to section 64 of the *Act*.

At the beginning of the hearing landlord F.R. testified that she was also a landlord and owner of the subject rental property but was not included on the Application for Dispute Resolution. Landlord F.R. testified that she had authority to speak on behalf of landlord N.R. who was listed on the application for dispute resolution. Pursuant to section 64 of the *Act*, I amended the tenant's application to include landlord F.R.

I note that 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

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This six-month fixed term tenancy began on June 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlords. The subject rental unit is a basement suite and the landlords live above the tenant. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Landlord F.R. (the "landlord") testified that on July 28, 2018 the tenant was personally served with a One Month Notice to End Tenancy for Cause with an effective date of August 31, 2018 (the "One Month Notice"). The tenant confirmed receipt of the One Month Notice but could not recall on what date.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the One Month Notice was issued due to a series of events between July 13-15, 2018. The landlord testified that on July 13, 2016 the tenant played loud music at 6 a.m. which woke up the landlords. The landlord testified that she heard yelling coming from the tenant's unit and later saw a punch mark on the tenant's door.

The landlord testified that between July 13-15, 2018 the tenant made several unreasonable complaints to the landlords about the landlords' noise levels. The landlord testified that her husband gets home from work around 2 a.m. and watches television when he gets home. The landlord testified that the tenant complained about the noise her husband makes when he gets home from work but that the noise levels are reasonable. The landlord testified that the tenant also complained about the noise levels when she and her husband are talking outside on the deck.

The tenant testified that on July 13, 2018 he was suffering from anxiety and turned his music on loud to help him deal with his anxiety. The tenant testified that his voice may have been elevated but that he was not screaming. The tenant testified that he did not punch his door. The tenant testified that landlord N.R. makes lots of noise in the early hours of the morning which wakes him up, so he has brought his concerns to the landlords' attention. The tenant testified that he has made noise complaints when the landlords' noise levels disturb him.

Analysis

I find that service of the One Month Notice was effected on the tenant on July 28, 2018, in accordance with section 88 of the *Act*.

The One Month Notice states the tenant's middle name and last name but does not state the tenant's first name. Residential Policy Guideline 11 states that the *Act* allows an arbitrator to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances.

I find that the tenant knew or ought to have known the information that was omitted from the notice, that being his first name. I find that it is reasonable in this circumstance to amend the One Month Notice to include the tenant's first name. Pursuant to section 68 of the *Act*, I amend the One Month Notice to include the tenant's first name.

Section 47(1)(d)(i) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

I find that the tenant's actions from July 13-15, 2018 have disturbed the landlords; however, I find that this disturbance is not severe enough to qualify as "significant interference" or "unreasonable disturbance" as set out in section 47 of the *Act*. I therefore find that the One Month Notice is of no force or effect and is cancelled.

This tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The One Month Notice is of no force or effect and is cancelled.

I issue a Monetary Order to the tenant in the amount of \$100.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 21, 2018

Residential Tenancy Branch