



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC DRI PSF FFT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*;
- dispute of a rent increase pursuant to section 41 of the *Act*;
- an Order for the landlord to provide services or facilities required by the tenancy agreement pursuant to section 62 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent R.D. attended and spoke on behalf of the landlords.

As both parties were present, service of documents was confirmed. The tenant testified that he served both landlords individually with the Notice of Dispute Resolution Proceeding package for this hearing by Canada Post registered mail on July 9, 2018, which was confirmed by the landlord's agent. The landlord's agent confirmed that the landlords did not serve any evidence on the tenant. Based on the undisputed testimonies of the parties, I find that the landlords were served in accordance with section 89 of the *Act*.

Preliminary Issue – Unrelated Claims

The tenant's application included unrelated claims to dispute a rent increase, in addition to the tenant's claim to dispute the landlord's One Month Notice, and to recover the filing fee for this application.

Further to this, on August 7, 2018, the tenant also submitted an application requesting to amend his original application to include an order for the landlord to resume the provision of internet service.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's additional claims to dispute a rent increase and for the provision of internet service are not related to the tenant's application to cancel the One Month Notice. Therefore, all of the tenant's claims except for his application to dispute the landlord's One Month Notice and to recover the filing fee paid for this application are dismissed, and I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*.

Procedural Matters

I explained to the parties 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

Is the tenant entitled to recover the cost of the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties confirmed that the tenancy agreement was originally a verbal agreement. The parties could not agree on whether or not the tenancy began in 2015 or 2016. As the tenant required a written tenancy agreement for immigration purposes, a written tenancy agreement was eventually prepared and signed by the parties in June 2017. A copy of this written tenancy agreement was submitted into evidence by the tenant. The terms in the written tenancy agreement are as follows:

- This month-to-month tenancy began on October 1, 2016.
- Monthly rent is payable on the first of the month. The rent noted on the agreement was \$600.00, however the parties confirmed that current monthly rent is \$650.00.
- The tenant paid a security deposit of \$270.00 at the beginning of the tenancy, which continues to be held by the landlord.

The tenant's rental unit is a 250 square-foot bachelor suite in the basement of the rental property, which is a residential home. The landlords reside on the main floor of the rental property.

The tenant confirmed that the landlord personally served him with the One Month Notice on July 8, 2018. The tenant filed an application for dispute resolution to dispute the notice on July 9, 2018.

The tenant submitted a copy of the landlord's One Month Notice into evidence, which states an effective move-out date of August 31, 2018. The notice is signed and dated by the landlord on July 8, 2018.

On page two of the notice, the landlords did not check off any of the boxes in the section titled "REASONS FOR THIS ONE MONTH NOTICE TO END TENANCY". In the "DETAILS OF CAUSE" section of the notice, the landlords have written in:

Landlord [name of landlord removed for confidentiality] is not agree/satisfied on monthly rent \$650.00.

The landlord's agent acknowledged that the landlords failed to correctly check off the appropriate box to indicate the reason for the notice to end tenancy.

The landlord's agent explained that the landlords were concerned that the tenant was going to be living in a very small bachelor suite with his wife and baby. The landlords did not intend for the rental unit to accommodate a family, but rather intended to have it rented by a single person due to the size of the unit. The tenant was a single person when he first began renting the unit, but is now seeking to have his wife and baby live with him in the rental unit. The landlord's agent stated that the notice should have indicated that the reason for ending the tenancy was due to an unreasonable number of occupants.

The tenant disputed that his tenancy should be ended for that reason as the occupants are a family unit.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant acknowledged being personally served with the landlord's One Month Notice on July 8, 2018.

The tenant filed an application to dispute the notice on July 9, 2018. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is compliant with section 52 of the *Act*.

Section 52 of the *Act* states:

52 In order to be effective, a notice to end 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) state the grounds for ending the tenancy,** and
- (e) when given by a landlord, be in the approved form.

[My emphasis added]

Based on the One Month Notice entered into evidence and the testimony of the parties, I find that the landlord's One Month Notice does not comply with section 52 of the *Act*.

I find that the landlords served the tenant with a One Month Notice that fails to state a ground permissible under section 47 of the *Act* for ending the tenancy. The landlord's agent testified that the landlords issued the One Month Notice because they were concerned that the rental unit was not suitable in size to accommodate the tenant, his wife and a baby. However, the landlords did not select the box for "unreasonable number of occupants", or any other permissible reason provided on the form.

The landlord issuing the One Month Notice is required to provide the reason for ending the tenancy, to ensure that the tenant is clearly aware of the case being made against them and has a full and fair opportunity to be prepare their evidence in order to dispute those claims, should they wish to.

Further to this, in the "DETAILS OF CAUSE" section of the notice, the landlords have written in that they are not satisfied with the amount of rent being paid. This is not a permissible reason for ending a tenancy by way of a One Month Notice form.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlords' One Month Notice issued to the tenant to be invalid and I find that it fails to comply with section 52 of the *Act*.

As such, I find that the tenant is successful in his application to cancel the landlords' One Month Notice.

As the tenant successfully challenged the landlords' One Month Notice, he may recover from the landlords the \$100.00 filing fee associated with this application. In place of a monetary award, the tenant may withhold \$100.00 from a future rent payment on ONE occasion.

Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated July 8, 2018 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on ONE occasion in satisfaction of the recovery of the filing fee.

I find that the tenant's claims to dispute a rent increase and to seek an order for the landlord to comply with providing services to be unrelated claims on the application and these claims are dismissed with 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: September 17, 2018

Residential Tenancy Branch