



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL CNC LA LRE FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 4, 2018, as amended on September 18, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated September 23, 2018 (the "One Month Notice");
- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated August 20, 2018 (the "Two Month Notice");
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 2, 2018 (the "10 Day Notice");
- an order authorizing the Tenant to change the locks to the rental unit;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing on her own behalf. Both parties provided affirmed testimony.

The Tenant testified the Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Application package was sufficiently served for the purposes of the *Act*.

In addition, the Tenant testified that an amendment was not served on the Landlord but that it only corrected the Tenant's address. Although not served in accordance with the *Act*, I find there is not prejudice to the Landlord in proceeding with the Application.

Further, the Tenant submitted further documentary evidence to the Residential Tenancy Branch, which was not served on time in accordance with the Rules of Procedure. In addition, the evidence was served on the Landlord by email, contrary to the Rules of Procedure. The Landlord testified the documents were of poor quality. As the documentary evidence was not served on the Landlord in accordance with the Rules of Procedure, they have not been considered further.

The Landlord did not submit documentary evidence in response to the Application.

The parties were provided with a full opportunity to present their evidence orally and in written and documentary form, and make submissions. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issues to address during this hearing were whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request to cancel the 10 Day Notice, the One Month Notice, and the Two Month Notice. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

During the hearing, the parties confirmed rent was paid within 5 days after the Tenant received the 10 Day Notice, in accordance with section 46(4) of the *Act*. Accordingly, the 10 Day Notice is ineffective to end the tenancy. This aspect of the Application has not been considered further.

As noted below, the tenancy agreement between the parties is for a fixed term from March 15, 2018 to March 31, 2019. As the tenancy is for a fixed term, and pursuant to section 49(2)(b) of the *Act*, the Landlord is not entitled to issue a Two Month Notice on the basis that the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. Accordingly, the Two Month Notice is ineffective to end the tenancy. This aspect of the Application has not been considered further.

In light of the above, the only matter for consideration is the effectiveness of the One Month Notice.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The fixed-term tenancy agreement submitted into evidence confirmed the tenancy began on March 15, 2018, and is expected to continue to March 31, 2019. Rent in the amount of \$1,250.00 per month is due on the first day of each month. Despite what is indicated in the tenancy agreement, the Tenant confirmed he paid a security deposit of \$625.00, which the Landlord holds.

The Landlord provided testimony regarding the One Month Notice. Specifically, the Landlord testified that:

- the Tenant smokes in the rental unit,
- cigarettes were found in the rental unit during a recent inspection,
- drugs were found in the rental unit during a recent inspection,
- the Tenant disabled the smoke detector in the rental unit,
- the Tenant called the owner of the unit above a “cunt”,
- the Tenant has called the Landlord vulgar names, such as “biker slut”,
- the Tenant did not allow the Landlord to access the rental unit, and
- there are more occupants in the rental unit that are permitted under the tenancy agreement, as evidenced by women’s clothing in the Tenant’s bedroom.

As noted above, the Landlord did not submit any documentary evidence in response to the Application, and did not refer me to any applicable provisions of the tenancy agreement or the *Act*.

In reply, the Tenant denied smoking in the rental unit but conceded his daughter has smoked in the rental unit without his knowledge.

The Tenant also testified that he did not disable the smoked detector. The Tenant testified it is hard-wired and still works. He testified that it went off and he tried to reset it. However, it came loose and now hangs from the ceiling.

In addition, the Tenant denied calling the Landlord or the upstairs owner names.

The Tenant also acknowledged he did not permit the Landlord to enter the rental unit because she did not provide adequate notice under the *Act*.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to take steps to end a tenancy for cause in the circumstances described therein. In this case, the Landlord wishes to end the tenancy on the bases indicated on the One Month Notice.

In this case, after considering the Landlord's oral testimony, it is clear the relationship between the parties has deteriorated. However, I find there is insufficient evidence before me to end the tenancy based on the One Month Notice. While the Landlord presented testimony of a serious nature, many of the Landlord's assertions were denied by the Tenant. Those assertions that were not denied were met with a reasonable alternative. Further, the Landlord's testimony was not supported by witness testimony or documentary evidence. Accordingly, I find that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

As the Tenant has been successful, I find he is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment at the Tenant's discretion.

Conclusion

The One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant remains at liberty to reapply for the remainder of the relief sought at a later date.

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 22, 2018

Residential Tenancy Branch