



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 LAKESIDE REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, 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;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant's agent and the landlord's property manager 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's agent testified that the landlord was personally served the notice of dispute resolution package but did not know on what date. The property manager (the "landlord") confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlord was served with this package in accordance with section 89 of the *Act*.

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 an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 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 tenancy began on February 1, 2018 and is currently ongoing. Monthly rent in the amount of \$800.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant to the landlord. The subject rental property is a bachelor suite with utilities included. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on October 30, 2018 she personally served the tenant's agent at the subject rental property with a One Month Notice to End Tenancy for Cause with an effective date of November 30, 2018 (the "One Month Notice"). The tenant's agent confirmed receipt of the One Month Notice on October 30, 2018 and testified that he provided the One Month Notice to his son on October 31, 2018. The tenant's agent testified that he does not live with his son.

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

- Tenant has allowed an unreasonable number of occupants in the unit/site.

The landlord testified that there are six people residing at the subject rental property which is only intended for occupation by one person. The landlord testified that since utilities are included in the monthly rent, an increase in the number of occupants, increases the cost of utilities used.

The landlord testified that she provided notice of entry to the subject rental property on November 8, 2018 and saw three queen sized beds at the subject rental property.

The tenant's agent testified that the only person who lives at the subject rental property is the tenant. The tenant's agent testified that there are not three queen sized beds at the subject rental property. The tenant's agent testified that the loft area has a foamy which the tenant uses to kneel on when sorting papers, the couch turns into a bed, and the tenant has a bed. The tenant's agent testified that the tenant's brother has spent the night on the couch before but has not done so since October 2018.

The tenant's agent testified that section 11 of the Tenancy Agreement states that the landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

Section 11 of the Tenancy Agreement also states the following:

- The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the *Residential Tenancy Act*.

Analysis

I find that the One Month Notice was sufficiently served on the tenant for the purposes of the *Act*, pursuant to section 71 of the *Act*, on October 31, 2018, because the tenant's agent testified that the tenant received the One Month Notice on October 31, 2018.

Where a tenant disputes a one month notice to end a tenancy for cause given by a landlord, the onus is on the landlord to prove that the tenant has breached section 47 of the *Act*.

Section 47(c) states that a landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit.

I find that the landlord has not proved, on a balance of probabilities, that there are an unreasonable number of occupants in the subject rental property or that any person(s) other than the tenant reside at the subject rental property. I therefore find that the One Month Notice is of no force or effect.

I find that in issuing the tenant the One Month Notice, the landlord did not breach the Act, or the Tenancy Agreement which specifically states at section 11 that if the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the *Residential Tenancy Act*.

I find that the tenant is not entitled to an Order directing the landlord to comply with the Act, regulation or tenancy agreement.

As the tenant was partially successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord. Pursuant to section 72 of the Act, I find that the tenant is entitled, on one occasion, to deduct \$100.00 from rent due to the landlord.

Conclusion

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

The tenant's application for an Order directing the landlord to comply with the Act, regulation or tenancy agreement is dismissed without leave to reapply.

The tenant is entitled to deduct \$100.00 on one occasion, from rent due to the landlord.

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: December 17, 2018

Residential Tenancy Branch