



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC, AAT, PSF, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, for an Order requirement the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to provide services or facilities; for an Order requiring the Landlord to provide the Tenant or his guest with access to the rental unit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that sometime in December of 2018 the Application for Dispute Resolution, the Notice of Hearing, and three pages of evidence were personally served to the Agent for the Landlord. The Agent for the Landlord stated that these documents were received on December 07, 2018. As the Landlord acknowledged receipt of the evidence, it was accepted as evidence for these proceedings.

On December 19, 2018 the Landlord submitted 89 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on December 18, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On December 30, 2018 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Agent for the Landlord approximately one week ago. The Agent for the Landlord stated that this evidence was received on January 10, 2018. The Agent for the Landlord declined the opportunity for an adjournment for the purposes of having more time to consider this evidence and it was accepted as evidence for these proceedings.

Preliminary Matter #1

The Tenant failed to record the number of the suite on his Application for Dispute Resolution. With the consent of both parties, the Application for Dispute Resolution was amended to reflect the complete address of the rental unit.

Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. The Tenant has identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I find that the Notice to End Tenancy is the most urgent issue in dispute and I will, therefore, only consider that matter at these proceedings.

The application for an Order requirement the Landlord to comply with the *Act* or the tenancy agreement; for an Order requiring the Landlord to provide services or facilities; and for an Order requiring the Landlord to provide the Tenant or his guest with access to the rental unit are dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- prior to moving into this rental unit he occupied a separate rental unit in the same residential complex;
- the Tenant moved out of that rental unit on July 03, 2018;
- the Tenant moved into the current rental unit on July 03, 2018;
- when he lived in the previous rental unit he shared it with another occupant;
- he does not share the current rental unit with another occupant;
- when he lived in the previous rental unit he paid half of the monthly rent and his portion of the rent was \$650.00;
- when he moved into this rental unit he agreed to pay rent of \$750.00 by the 3rd day of each month;
- he also pays \$30.00 to rent a fridge at the current rental unit;
- when the Tenant moved into the previous rental unit the Tenant signed a tenancy agreement that names him and a co-tenant;
- he did not sign a new tenancy agreement for the current rental unit; and
- since moving into the current rental unit the Tenant was late paying his rent in September and November of 2018.

The Landlord stated that on November 26, 2018 a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit, which declared the Tenant must vacate the rental unit by January 03, 2019. The Tenant stated that he located this Notice to End Tenancy on November 26, 2018.

The Landlord and the Tenant agree that the reason cited for ending the tenancy on the Notice to End Tenancy was the rent has been repeatedly late.

Analysis

The *Residential Tenancy Act (Act)* defines a tenancy as a tenant's right to possession of a rental unit under a tenancy agreement. The *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

On the basis of the undisputed evidence I find that prior to the Tenant moving into his current rental unit, the Landlord, the Tenant, and a co-tenant entered into a written tenancy agreement for a different suite in the same residential complex. On the basis of the undisputed evidence I find that the Tenant moved out of that suite on July 03, 2018 and that he moved into the current rental unit on July 03, 2018. As the Tenant no longer had the right to possess the first suite after July 03, 2018, I find that tenancy ended on July 03, 2018.

On the basis of the undisputed evidence I find that the Landlord and the Tenant entered into a verbal tenancy agreement for the current rental unit and that this second tenancy began on July 03, 2018. I find that two tenancies are completely separate because:

- they relate to different units;
- the first tenancy agreement identified two tenants; and
- the rent for the two units was for different amounts.

Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. On the basis of the undisputed evidence I find that on November 26, 2018 the Tenant was served with a One Month Notice to End Tenancy, served pursuant to section 47(1)(b) of the *Act*.

I find that the Landlord only has the right to end this tenancy if the Tenant was repeatedly late in paying rent for this tenancy. I find that the Landlord does not have the right to end this tenancy on the basis of any rent that was paid late during the last

tenancy, given that it was a separate tenancy.

On the basis of the undisputed evidence I find that the Tenant was late in paying his rent for this tenancy in September and November of 2018.

Residential Tenancy Branch Policy Guideline #38, with which I concur, reads, in part:

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

As the evidence does not establish that the Tenant has been late paying his rent during this tenancy, I find that the Landlord does not have the right to end this tenancy pursuant to section 47(1)(b) of the *Act*. I therefore grant the Tenant's application to set aside this One Month Notice to End Tenancy for Cause.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application.

Conclusion

The One Month Notice to End Tenancy for Cause that is the subject of these proceedings is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

I authorize the Tenant to retain \$100.00 from one rent payment in compensation for the fee paid to file this Application for Dispute Resolution.

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: January 14, 2019

Residential Tenancy Branch