



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KANDOLA VENTURES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF, MNDC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence in two separate packages via Canada Post Registered Mail. The landlord's agent (the landlord) was unable to confirm this, but stated that she was notified of the hearing by the owners. The landlord stated that some evidence was to be submitted, but cannot verify how, when or if documentary evidence was submitted. A review of the Residential Tenancy Branch file shows no evidence uploaded by the landlord. The tenant reported no documentary evidence was received. Neither party raised any service issues. As such, I find based upon the evidence before me that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Preliminary Issue

Residential Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. In this case, the tenant has applied for a monetary claim of \$990.00 for compensation for damage to her personal property as the landlord changed the locks to the storage without the tenant's knowledge. The tenant's personal property was damaged by water. The tenant also seeks a rent reduction for the loss of use of storage as it is provided as part of the tenancy agreement. The tenant confirmed that her monetary claims were unrelated to the issue of the 1 month notice. As such, the tenant's monetary claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

On December 31, 2018, the landlord served the tenant with the 1 Month Notice dated December 31, 2018 in person. The 1 Month Notice sets out an effective end of tenancy date of January 31, 2019 and that it was being given as:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

No details of cause were provided.

The landlord provided undisputed affirmed testimony that she is not aware of the actual term of breach by the tenant for cause. The landlord also confirmed that no written notice to correct the breach was given to the tenant.

The landlord provided affirmed testimony that the tenant had also allowed an assignment/sublet of the rental unit to other parties. The landlord stated she had no proof to support the claim of an assignment/sublet of the rental premises.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed testimony of both parties and find that the landlord has failed to provide sufficient evidence of the two reasons for cause listed on the notice.

The landlord alleges that, the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so was received. In this case, the landlord's agent confirmed that no written notice was given to the tenant cautioning her to correct the breach of a term of the tenancy agreement. The landlord also alleged that the tenant had assigned/sublet the rental unit without the written permission of the landlord. In this case, the landlord failed to provide any details of this or any evidence in support of this claim. I note that no documentary evidence was submitted by the landlord. I find that the landlord has failed to prove, on a balance of probabilities that the tenant has breached a material term of the tenancy agreement that was not corrected after a reasonable time after written notice to do so or that the tenant has sublet/assigned the rental unit. The tenant's application to cancel the 1 month notice dated December 31, 2018 is granted. The tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As such, I authorize the tenant to withhold one-time \$100.00 in satisfaction of recovering her filing fee for March 2019.

Conclusion

The tenant's application is granted.

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: February 11, 2019