



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, FF

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;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served to the landlord the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 19, 2018. The landlord stated that his submitted documentary evidence was placed in the tenants' mailbox late on January 19, 2019 approximately 6 days prior to the scheduled hearing. The tenants confirmed receipt, but noted no issues in proceeding with the hearing regarding the landlord's evidence. I accept the undisputed affirmed evidence of both parties and find that the landlord was properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. Although the landlord failed to comply with the Rules of Procedure regarding the submission of evidence, the tenants confirmed that there were no issues in proceeding with the evidence for the hearing.

Preliminary Issue

At the outset, the tenants confirmed that the request for emergency repairs has been resolved and is no longer required. The tenants cancelled this portion of the claim. As such, no further action is required for the tenants' request for emergency repairs.

An amendment was also filed in which the tenants seek recovery of the \$100.00 filing fee if successful in their application for dispute.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Are the tenants 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.

This tenancy began on February 1, 2018 on a fixed term tenancy until January 31, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement. The monthly rent is \$1,800.00 payable on the 1st day of each month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were paid on January 20, 2018.

On December 12, 2018, the landlord served the tenant with the 1 Month Notice dated December 12, 2018 by placing it in the tenant's mail box. The 1 Month Notice sets out an effective end of tenancy date of February 1, 2019 and that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The details of cause listed:

Tenant has rented out unit without landlord knowledge or approval.

During the hearing the landlord cancelled cause #1 of the notice as he is unsure if the tenants have an unreasonable number of occupants in the rental unit. As such, no further action is required for this portion of the claim.

The landlord's second reason for cause, that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord is that the tenant has turned off the power to laundry. The landlord claims that he has received complaints from other occupants that the power to the laundry has been turned off preventing them from using it. The tenants have confirmed that power to the laundry had been turned off previously from 12 midnight to 10am in the morning. The tenants stated that this was done at the request of the landlord (the named landlord's father). Both parties clarified and confirmed that the named landlord's father was the direct contact for landlord/tenant issues previously before passing. The named landlord has now assumed all landlord duties. The landlord stated that he had "no idea" of this direction from his father.

The landlord also seeks an end to the tenancy under the 3rd reason for cause listed "the tenant has assigned or sublet the rental unit without the landlord's written consent. The landlord provided a copy of a standard RTB-1 form (2018/01) and includes in clause 9, Assign or Sublet which states in part that the tenant may assign or sublet the rental unit to another person with the written consent of the landlord. The landlord claims that the tenant had a 3rd roommate previously and that the tenants were given permission to find a replacement roommate. The landlord claims that the tenants never introduced the new roommate to the landlord and that the landlord does not know who this person is. The tenants argue that the landlord has known and met previous roommates without issue for months and have suddenly changed their minds without any notice. The tenants feel that this is retaliation. When asked if the landlord had given any direction to the tenants to introduce the new tenant, or provide the new tenant's particulars to the landlord, the landlord answered "no".

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.

In this case, I accept the affirmed testimony of both parties and find based upon them that the landlord has failed to justify his reasons for cause. In the first reason for cause, the tenant provided undisputed affirmed testimony that he was following the previous landlord's directions on the use of the laundry and enforcing them during certain hours. The landlord confirmed that he was not aware of these directions given to the tenant. On the second reason for cause, the tenants replaced a roommate with the permission

of the landlord. The landlord failed to provide any direction regarding the selection of the new roommate or any requirements after one was made. On this basis, I find that the landlord has failed to justify his reason for cause. The one month notice dated December 12, 2018 is set aside and the tenancy shall continue. I noted a major factor during the hearing between the parties in that there was a lack of communication. As such, I caution both parties that had there been proper communication both parties could have avoided the issuance of the notice and this hearing.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee. I authorize the tenants to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenants' 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 1, 2019

Residential Tenancy Branch