



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenant applied:

- to cancel a One Month Notice to End Tenancy for Cause dated December 28, 2018 (the "One Month Notice");
- to dispute a rent increase;
- for an order directing the Landlord to comply with the *Act*, regulation or tenancy agreement; and
- to recover the cost of his filing fee.

The Tenant and the Landlords, J.H. and N.H., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (the "Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

The Parties confirmed that the Tenant served the Landlords with the complete Notice of Hearing package by hand on January 1, 2019.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing. The Parties confirmed their understanding that the decision would be emailed to both Parties.

Severing Issues

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single

application. In this circumstance, the Tenant indicated several matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the One Month Notice and the recovery of the filing fee in this decision. As such, the Tenant's other claims noted above are dismissed, with leave to re-apply.

Issues to be Decided

- Is the Tenant entitled to an order cancelling the One Month Notice?
- Is the Landlord entitled to an order of possession, if the Tenant is unsuccessful in cancelling the One Month Notice?
- Is the Tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

Tenancy Agreement

The Parties agreed that the Tenant moved into the rental unit in September 2017, paying a monthly rent of \$750.00 at the time, with the rent being due on the 15th of each month. The Parties agreed that the Tenant paid a security deposit of \$375.00 and no pet deposit. The current rent is \$1,000.00. There is no written tenancy agreement, but the Parties agreed that it is a month-to-month tenancy.

One Month Notice

The Parties agreed that the Landlords posted the One Month Notice on the Tenant's door on December 28, 2018. The Parties disputed whether the Landlord served the Tenant with the first page only or the first and second pages of the One Month Notice. The Tenant submitted only the first page of the One Month Notice into evidence before me, as he said that was all he received.

The One Month Notice purports to give the Tenant one month notice of the end of the tenancy; however, it is dated December 28, 2018 and the date when the Tenant must move out of the rental unit is also stated to be December 28, 2018. The Landlords said they erred and that they intended to give an effective date of January 29, 2019.

As there is no second page before me, I asked the Landlords their reason for issuing the One Month Notice. Initially, the Landlords told me that they want to use the rental

unit for one of their parents who are arriving from India and need a place to stay. I informed them that landlords need to give tenants two months' notice for their use of the property for close family members, pursuant to section 49 of the *Act*; immediately thereafter, the Landlord, N.H., said that the Tenant's children are noisy and give her migraines, which is why they want the rental unit back from the Tenant. Further, the Landlord, N.H., said that in October 2018 they gave the Tenant verbal notice that the tenancy would end in January 2019, so that the parents could move in. She said they gave him more than two months' notice. I informed the Landlord that the tenancy is subject to the provisions of the *Act*, which require them to give the Tenant two months written notice with the form and content consistent with the *Act* for a close family member to take over the rental unit.

The inconsistency in the Landlords' testimonial evidence raises questions in my mind about the reason the Landlords issued the One Month Notice.

Analysis

Despite the lack of a written tenancy agreement, I find that the Parties have a verbal tenancy agreement which is governed by the *Act*, based on their evidence that:

- the Parties intended to form an agreement regarding the rental of a residential unit,
- the Tenant pays a consistent amount of money to the Landlord on a monthly basis;
- the Landlord holds the Tenant's security deposit; and
- the Parties applied to resolve their dispute at the Residential Tenancy Branch.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*.

Section 47 of the *Act* addresses a landlord's notice for cause and states:

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Parties advised me that rent is payable by the Tenant on the 15th of each month.

Section 52 of the *Act* states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The One Month Notice in this case was signed and dated and gave the address of the rental unit. The effective vacancy date was the same day as the One Month Notice was signed, but this is automatically corrected under section 53. However, whether the Landlords gave the Tenant their grounds in the One Month Notice is disputed; also, the Landlords' testimony in the hearing was inconsistent with the provisions of the *Act* pertaining to this type of notice to end tenancy.

When I consider all the evidence before me overall, I find that the Landlords did not meet their burden of establishing that the One Month Notice was validly issued pursuant to the *Act*. Accordingly, I find that the Tenant was successful in his Application to cancel the One Month Notice.

I also grant recovery of the filing fee to the Tenant, pursuant to section 72 of the *Act*, as he was successful in his Application that was considered in this decision. I authorize the Tenant to deduct the amount of \$100.00 from their next rent payment in lieu of the award of the filing fee.

Conclusion

The portions of the Tenant's Application that I considered in this hearing – his request to set aside the One Month Notice and the recovery of the filing fee -- are successful;

the remaining claims are dismissed with leave to reapply. The tenancy continues until ended in accordance with the *Act*.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 13, 2019

Residential Tenancy Branch