



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, ERP, OLC, RR

Introduction

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

- to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47 of the Act;
- an order for the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to have the landlord comply with the *Act* and/or tenancy agreement;

The tenant attended the hearing by way of conference call. The landlord did not attend this hearing, although I waited until 11:10 AM in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 AM. The tenant attending the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that on January 16, 2019, the landlord was served, by way of Registered Mail, the Tenant's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), which included the tenant's evidence. The tenant provided as evidence copies of the Canada Post transaction receipt and tracking slip, both of which contained the tracking number, to confirm this mailing.

The tenant testified that the dispute resolution hearing package and evidence was sent

to the landlord's service address indicated on the 1 Month Notice provided by the landlord to the tenant. The information provided on the Canada Post tracking slip confirms that the registered mail item was sent to the same address provided for the landlord on the 1 Month Notice.

Section 90 of the Act determines that a document served by registered mail is deemed to have been received five days after service. As such, in accordance with sections 89 and 90 of the Act, I find that the landlord has been deemed served with the dispute resolution hearing package, and accompanying evidence, on January 21, 2019, the fifth day after their registered mailing.

Preliminary Issue – Scope of Application

I advised the tenant that she has applied for a number of items as part of his application. Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

The Residential Tenancy Branch Rules of Procedure, Rule 2.3 provides me with the discretion to sever unrelated claims:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the documentary evidence, the tenant's claim, and hearing from the tenant, I determined that the tenant's claim in relation to cancelling the 1 Month Notice was unrelated to the other issues raised by the tenant. As the 1 Month Notice is the more pressing matter, I dismiss the remainder of the tenant's claim with leave to reapply.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, 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 all the documentary evidence, and the testimony of the tenant, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The subject rental unit is a basement suite located within a single-family detached house. The house contains an upper suite which is rented to other occupants, and also contains a second basement suite which is occupied by another occupant. The tenant rents one of the basement suites.

The tenant testified that she received the 1 Month Notice, dated January 12, 2019, on January 12, 2019 and that she submitted an application for dispute resolution on January 14, 2019 to dispute the 1 Month Notice.

The tenant testified that the 1 Month Notice was posted to the door of the rental unit, and that she did not have any communication with the landlord or property manager with respect to why the landlord issued the 1 Month Notice. The tenant provided that she was not given any reasons as to why the landlord issued the 1 Month Notice or what the landlord determined qualified as "putting the landlord's property at significant risk", which was the box selected by the landlord on 1 Month Notice.

The tenant testified that the second page of the 1 Month Notice includes a statement from the landlord whereby the landlord asserted that the tenant disturbs the neighbours and that the police have attended the rental unit on numerous occasions. The tenant denied these assertions submitted by the landlord and testified that the statements on the 1 Month Notice are false and contrived by the landlord as a method by which to create a reason to issue the 1 Month Notice.

The tenant testified that during the entirety of her tenancy, the police attended the rental unit for the purpose of a routine procedure, whereby the police informed the tenant that they needed to record a statement from her related to a matter involving her ex-husband. The tenant stated that the police informed her in advance that they would need to meet with her to take a statement, and that although she preferred to meet with them elsewhere, circumstances were such that they attended the rental unit to take her statement.

The tenant testified that police have never attended the rental unit on any other occasion and that the landlord's statements on the 1 Month Notice are entirely false and fabricated as a pretense to issue the 1 Month Notice.

The tenant denied ever disturbing any of the other occupants of the house in which the rental unit is located. The tenant testified that the rental unit is occupied by her and her young son. The tenant denies being approached by the landlord with respect to purported instances of disturbances, and in the absence of any communication from the landlord, the tenant cannot ascertain the basis of the landlord's allegations of disturbance as stated on the 1 Month Notice.

The tenant testified that she and her son are respectful of the other occupants of the rental unit, and conduct themselves in a manner such that their actions have never been classified as unreasonable or of such a nature as to be classified as a disturbance.

The tenant denied that the landlord had cause to issue the 1 Month Notice, and further stated that she was never approached by the landlord regarding any instances whereby she was the subject of a complaint with respect to disturbance or undue noise.

Analysis

Section 47 of the Act allows a landlord to end a tenancy by giving notice to end the tenancy if one of the reasons provided under section 47(1)(a) through 47(1)(l) can be substantiated by the landlord.

In accordance with subsection 47(4) of the Act, the tenant must submit an application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month on January 12, 2019. The tenant filed her application for dispute resolution on January 14, 2019. Accordingly, the tenant filed within the ten day limit provided under the Act.

Although this was the tenant's application, the burden of proof in such matters to end a tenancy for cause rests with the landlord. Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

In the matter before me, the applicant tenant disputes the landlord's 1 Month Notice in its entirety, and this hearing was convened to determine the validity of the 1 Month Notice. In such proceedings, the burden of proof rests with the landlord to provide evidence the 1 Month Notice was validly issued for the stated reason(s). The landlord did not appear in the hearing to advance or defend his reasons for issuing the 1 Month Notice.

I found the landlord was served with the dispute resolution hearing package in accordance with the Act and was duly notified of this hearing and the means to attend the hearing. The landlord did not appear to defend his 1 Month Notice or present evidence to support ending the tenancy. As a result, I find I have not been presented evidence sufficient to determine that the 1 Month Notice was validly issued for the reasons stated on the 1 Month Notice. As a result I am unable to establish that the landlord issued the tenant a valid 1 Month Notice. Therefore, I must order the 1 Month Notice, dated January 12, 2019, set aside.

The landlord's 1 Month Notice, dated January 12, 2019, is hereby **cancelled, and is of no force and effect**. The tenancy continues in accordance with the Act and the tenancy agreement between the parties.

Conclusion

Based on the above, I order the 1 Month Notice, dated January 12, 2019, is cancelled and is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

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 19, 2019

Residential Tenancy Branch