



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WINDSOR MANOR RPM INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 30, 2019 ("One Month Notice"), and to recover the cost of his filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony; however, no one appeared for the Landlord during the 15 minute teleconference call. I explained the hearing process to the Tenant and gave him an opportunity to ask questions about the hearing process.

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

Preliminary and Procedural Matters

The Tenant said that he served the Landlord with his Application for Dispute Resolution and documentary evidence in person within 24 hours of receiving this package from the RTB. Our records indicate that the Tenant applied for dispute resolution on February 6, 2019, or seven days after being served with the One Month Notice. I find the Tenant disputed the One Month Notice in compliance with section 47 (4) of the *Act*. I find that the Tenant served the Landlord with the Application on February 7, 2019, in compliance with section 89 (1) (a) of the *Act*. Further, the Landlord submitted a tenancy agreement to the Residential Tenancy Branch system in response to the Tenant's Application. Based on everything before me, I find that the Landlord was served with the Application and documentary evidence.

The Tenant provided his email address and that of the Landlord at the outset of the hearing and confirmed his understanding that the decision would be emailed to both Parties.

Issue(s) to be Decided

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

Background and Evidence

The Tenant confirmed the information in the tenancy agreement that the Landlord had submitted. He said the tenancy started on May 1, 2017 and as of May 1, 2018, it became a month-to-month tenancy. The Tenant said he pays \$1,000.00 in rent and that he paid the Landlord a \$475.00 security deposit and a \$475.00 pet damage deposit at the beginning of the tenancy.

The Tenant said that this matter arose, because he was taking care of a friend's dogs for six days. He said that the pets did not belong to him and that they are no longer in the rental unit.

The Landlord had submitted a copy of the tenancy agreement, which has a clause about pets, including:

Having regard to the enjoyment, quiet possession, safety and health requirements of other occupants in the residential property, as well as the nature of the property, the Tenant shall not keep, or allow to be kept, any animals or pets, domestic or wild, fur bearing or otherwise, unless specifically permitted in writing by [the Landlord], which permission may be revoked by [the Landlord] at any time, particularly having regards to the factors set out above, which factors are not all inclusive. . . . This is a material condition of the agreement.. . .

The Tenant said that he did not attempt to gain the Landlord's permission to have the pets in his rental unit, prior to the dogs being there. However, he said:

I had already paid a pet deposit and there are several people in the apartment who have pets, as well. The dogs were only going to be there for five days. The neighbours may not have seen the dogs; I put a sign up saying I have these dogs

here for a couple days and if they bother anyone, please let me know and I'll try to sort that out.

The Tenant said that no one contacted him in response to his sign.

The Tenant said he was surprised to be served with the One Month Notice, as he said "there should have been a breach letter that should have been provided to me with a note saying 'this is the breach we have seen, we would like you to rectify the breach in a specific period of time'. They would then inspect the unit to see if there was any damage, but that did not happen. They went straight to the 30 day Notice."

The Tenant said that after he served the Landlord with the Application, they called him after the time period for them to send him a copy of their submissions ran out. The Tenant said the agent said they had no evidence to upload and they said they would call into the hearing and rescind the One Month Notice to the arbitrator.

The Landlord had submitted a copy of the tenancy agreement on March 4, 2019, but did not serve it on the Tenant or otherwise let him know that they had submitted it to the RTB.

The Tenant reiterated that "due to the vagueness of the lease and that I had paid a pet deposit, what they were stating was too vague to stand. Also I haven't had any complaints from neighbours about the dogs."

Analysis

Section 47(1)(d) of the *Act* states:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk.

The burden of proof in a One Month Notice is on the Landlord to establish that there is cause for the eviction. When I consider the evidence before me, overall, I find the Landlord has not met this burden. I cancel the One Month Notice without leave to reapply.

As the Tenant was successful in his Application, I award him recovery of the filing fee.

Conclusion

I cancel the One Month Notice without leave to reapply. The tenancy shall continue until ended in accordance with the *Act*.

I award the Tenant recovery of the filing fee and authorize him to reduce one rent payment by \$100.00 to recoup this amount.

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: March 22, 2019

Residential Tenancy Branch