



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, LRE, OLC, RP, OT; OPC, MNDCL, FFL

Introduction

This hearing was scheduled in response to 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;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- an "other" remedy, unspecified.

This hearing was also scheduled in response to the landlord's cross application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order of possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and the landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the tenant confirmed that she had received the landlord's application and evidence. As the tenant did not raise any issues regarding service of the

application or the evidence, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Service of the Tenant's Application

While the landlords acknowledged personal receipt of the tenant's application on January 23, 2019, they claimed they did not receive a copy of the hearing package from the tenant. A hearing package includes a notice of dispute resolution proceeding which provides the conference call details, the respondent instructions for dispute resolution, and the dispute resolution fact sheet. During the hearing, the landlords acknowledged that they obtained the necessary information to participate in the hearing from the Residential Tenancy Branch. For this reason, I accept the hearing package has been sufficiently served to the landlords and accept the tenant's application.

Preliminary Issue – Sever

Rule 2.3 states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the 1 Month Notice. Accordingly I find the remaining portions of the parties' respective applications must be severed.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the testimony of the parties, the tenancy began on November 28, 2015 on a month-to-month basis. Rent in the amount of \$884.00 is payable on the first of each month. The tenant remitted a security and pet deposit in the total amount of \$850.00 at the start of the tenancy, which the landlords still retain in trust. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlords' 1 Month Notice dated January 23, 2019, by way of posting. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlords testified that the 1 Month Notice was issued because the tenant acquired two additional pets in contravention of her tenancy agreement and failed to maintain the premises in a reasonable state of cleanliness. In particular the tenant allowed her pets to urinate and defecate inside and outside the unit, and had garbage littered throughout the unit and grounds. To support their position, the landlords have submitted photographs.

The landlords testified that on January 8, 2019, they informed the tenant in writing of the breaches and warned the tenant that failure to comply by January 22, 2019 would result in termination of the tenancy. The landlords testified that despite the warning, the tenant did not abide by the letter. Accordingly, the landlord issued the 1 Month Notice January 23, 2019.

During the hearing, the tenant acknowledged receipt of the warning letter. She did not refute the landlords' allegation that she continues to house additional pets in contravention of her tenancy agreement or that she still has refuse in her unit and throughout the grounds.

Analysis

Under section 47 of the *Act*, a landlord may end the tenancy for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. In order to end a tenancy for breach of a material term the landlord must prove the breach and prove the tenant was provided with written notice of the breach that includes a timeline for the tenant to correct the breach.

Upon review of the documentary evidence and testimony of the parties, I am satisfied that the landlords have established grounds to end this tenancy on the basis of a breach of the tenancy agreement. Based on the tenant's own testimony, I am satisfied that the tenant was provided written notice of the breaches and adequate time to correct them,

yet failed to do so. I dismiss the tenant's application to cancel the 1 Month Notice and uphold the landlords' 1 Month Notice.

Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the parties' testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenant's application has been dismissed and the landlord's 1 Month Notice upheld, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for the application. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain \$100.00 of the \$850.00 security and pet deposit in full satisfaction of the monetary award.

Conclusion

The tenant's entire application is dismissed, without leave to reapply.

An order of possession is granted to the landlords effective **two (2) days after service on the tenant**.

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 07, 2019

Residential Tenancy Branch