



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 24, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- to cancel a One Month Notice for Cause;
- an order that the Landlord comply with the *Act*, regulation, or tenancy agreement;
- an order to provide services or facilities required by tenancy agreement or law; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord A.F. attended the hearing at the appointed date and time, and both provided affirmed testimony.

The Tenant testified that he submitted an amendment to his Application on January 28, 2019. The Tenant testified that he served his Application, the amendment, and documentary evidence package to the Landlords by registered mail on January 28, 2019. A.F. testified that the Landlords did not receive the mailing. The Tenant stated that he received the Landlords' forwarding address for service from the previous owner. The Tenant indicated that he has not received any alternate address from the Landlords for service.

A.F. testified that the Landlords do not currently have postal service to their residence and therefore preferred using their business address for service. A.F. acknowledged that the Landlords did not provide this address to the Tenant. A.F. indicated that she wished to continue with the hearing in lieu of an adjournment. As a result, Pursuant to Section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing, it was determined that the Landlords had not served the Tenant with a One Month Notice for Cause, which the Tenant had applied to dispute. The Tenant stated that he was seeking to dispute a notice relating to the Landlords wishing to terminate or restrict a facility. As such, the parties agreed to amend the Tenant's Application to remove this claim from the Tenant's Application.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlords comply with the *Act*, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to an order to provide services or facilities required by tenancy agreement or law, pursuant to Section 62 of the *Act*?
3. Is the Tenant entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2018. Rent in the amount of \$890.00 is due to the Landlords each month. A security deposit was paid to the Landlords in the amount of \$325.00.

The Tenant testified that his rent includes; a cottage where he resides in the amount of \$650.00, a portion of a shop where he stores some of his possessions in the amount of \$200.00, as well as internet in the amount of \$40.00, which he needs to run a home business. The Tenant stated that there was a change of ownership and that the current Landlords purchased the property and took possession as of January 16, 2019. The Tenant submitted a letter from the previous owner outlining these details in support.

A.F. testified upon taking ownership of the property, the Landlords wished to terminate the Tenants access to the shop. A.F. stated that the insurance company was unwilling to insure the shop, therefore the Landlords are seeking to terminate the facility as a result.

A.F. testified that she served the Tenant with a Notice Terminating or Restricting a Service or Facility (the "Notice") dated January 18, 2019 to the Tenant in person. The Tenant confirmed receipt. The Notice informed the Tenant that the Landlords were

terminating the “1/2 shop, home based business in rental property.” The Notice also indicated that the Landlords would be reducing the Tenant’s rent in the amount of \$200.00 effective February 1, 2019.

In response, the Tenant testified that the Landlords should not be permitted to terminate his access to the shop as it was a material term of his tenancy agreement as well as he stores items in the shop that are essential to his living accommodation.

The Tenant also applied for an order that the Landlords provide a service required by the tenancy agreement. The Tenant testified that the Landlords had disconnected his internet, resulting in him losing access to his email accounts and web hosting. The Tenant testified the internet was disconnected for several days.

In response, A.F. testified that the Landlords had switched internet providers, which caused a brief interruption in service. A.F. testified that this was outside of the Landlords control and that the internet was only disconnected for two days and has since been restored. The Tenant confirmed that he currently has internet service.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 27 of the Act,

- (1) *a landlord must not terminate or restrict a service or facility if; (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or (b) providing the service or facility is a material term of the tenancy agreement.*
- (2) *a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.*

According to the Residential Tenancy Policy Guideline #22 (the “Policy Guidelines”) An essential service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation.

In this case, I find that the Tenant uses the shop for storage of personal items. I find that the Landlords terminating the Tenant’s access to the shop does not make it impossible or impractical for the Tenant to use his rental unit as a living accommodation.

Section 22 of the Policy Guidelines also describes a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement.

I find that there is insufficient evidence before me to indicate that the Tenant having access to the shop was a material term to the tenancy between the parties. I find that the shop is being used by the Tenant as a means to store some of his possession. I find that while it is convenient for the Tenant to have extra storage space, it is not so important that the most trivial breach of the term gives the other party a right to end the tenancy.

The parties agreed that the Landlords served the Tenant the Notice on January 18, 2019. The Notice has an effective date of February 1, 2019. I find that this does not provide the Tenant with 30 days' notice. Pursuant to Section 68 of the *Act* I amend the effective date of the Notice to February 28, 2019. I am satisfied that the Notice reduces the rent in the amount of \$200.00 which is equivalent to the reduction in value of the tenancy agreement resulting from the termination of the facility

As a result, I find that the Landlords have complied with the *Act* and therefore dismiss this portion of the Tenant's claim without leave to reapply.

The Tenant is also seeking that the Landlords provide a service required by the tenancy agreement. The parties agreed that the internet was temporarily disconnected as a result of the Landlords switching internet providers following the purchase of the property. I find that the Tenant has provided insufficient evidence to demonstrate that the Landlords restricted the internet service, instead it appears as though the Tenant continues to be provided internet, just through a different provider. While this may have caused the Tenant to experience loss of his email accounts connected to the previous provider, I find that the Landlord continue to abide by the tenancy agreement in relation to providing internet service to the Tenant.

As a result, I dismiss this portion of the Tenant's claim without leave to reapply.

As the Tenant was not successful with his Application, I find that the Tenant is not entitled to the recovery of the filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply. The Landlord's Notice to Terminate or Restrict a Service or Facility is upheld.

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 25, 2019

Residential Tenancy Branch