



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, 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"):

1. To cancel a One Month Notice to End Tenancy for Cause dated January 19, 2019 ("One Month Notice"),
2. For an order requiring the Landlord to comply with the *Act*, regulation or tenancy agreement, and
3. To recover the cost of their filing fee.

The Tenant and the Landlord 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 Landlord 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 Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence.

Preliminary and Procedural Matters

In the course of the hearing, it became apparent that the Tenant's Application was primarily concerned with the first and third matters listed above for which he had applied. When I asked him to specify his evidence relating to the second claim, he commented on the third matter, recovery of the filing fee. Accordingly, I will focus on the Tenant's first and third matters for which he applied.

Issue(s) to be Decided

- Is the Tenant entitled to an order cancelling the One Month Notice?
- Is the Tenant entitled to recovery of the filing fee from the Landlord?

Background and Evidence

In the hearing, the Landlord said that she served the One Month Notice on the Tenant by posting it to the door and putting one under the door and putting one in the Tenant's mailbox. The Tenant agreed that this was how he was served with the One Month's Notice. The One Month Notice gives a vacancy effective date of February 28, 2019. It was signed, dated, has the rental unit address, the effective date and the grounds for ending the tenancy being that the "Tenant has allowed an unreasonable number of occupants in the unit/site."

In the hearing, the Tenant said that he applied for dispute resolution, because "the Landlord is saying I have to evacuate the rental unit because my girlfriend moved in with me. This sounds unreasonable – a couple living in a one bedroom unit is totally fine. I don't understand why she's saying this."

The Landlord said that she mentioned this requirement to the Tenant, and wrote into the contract that he cannot live with anyone else. I don't want him to live with anybody else. She said if his parents visit from out of town, that's fine for a visit, but he initialed this term in the tenancy agreement at that time it was signed.

The Landlord said the rental unit is 450 square feet and that she wanted to have only one tenant from the beginning of the tenancy. The Landlord said, "there used to be two people living there and there was lots of damage, because of partying. I had to change the flooring. I mentioned this at the beginning - I said I didn't want two people. I agreed to rent it to him, because it was just one person and he initialed that it would be alright. I could have rented it for more money, if I wanted two people to live there."

The Tenant said: "As far as I remember, the only thing that she said was that she didn't want me to rent it out to someone else – like having two beds in the living room and two beds in the bedroom. But there is no such thing. I haven't signed anything that I'll not have my girlfriend live with me or that I'll be living here alone."

The Landlord commented on the Tenant's last statement, saying:

It sounded so funny, but I never said such a thing about two beds in living room or two beds in bedroom. I said he cannot have a roommate or anyone. If he wanted someone to move in, then he had to tell me and get my permission and fill in a form for the agreement, but he didn't bother to ask me. I found out accidentally. I didn't hear from him, so I asked the concierge if the fob had been used. The concierge said both fobs were working at different times. I was worried about the apartment and I said I wanted to check the unit. I wasn't happy that someone else moved in. I said I can meet both of them and make a new contract and that both of them have to sign the agreement. The recommendation by the Residential Tenancy Branch was that if they're not making a new contract then I could give them a notice of eviction or increase the rent by email.

The tenancy agreement indicates that there was one addendum. Although it was not entitled "Addendum", there was a handwritten note after the last page of the tenancy agreement that said the following:

1. Unit must be clean at the end of the tenancy,
2. Tenant has one fob & he is responsible for his fob. At the end of the tenancy fob must be back to landlord.
3. This agreement is between the landlord & tenant / [landlord's & tenant's names] (just 1 tenant)
4. Tenant must get tenant insurance.

MS SM

The Tenant's and Landlord's initials were handwritten at the bottom of this list of terms.

Analysis

Given that the One Month Notice was posted on the Tenant's door, slipped under his door, and placed in his mailbox on January 19, 2019, I find that it was deemed served on January 22, 2019, pursuant to section 90 of the *Act*. It was signed, dated, has the rental unit address, the effective date and the grounds for ending the tenancy, pursuant to section 52 of the *Act*. I find that the One Month Notice was validly served on the Tenant .

Section 47 of the *Act*, authorizes a landlord to end a tenancy for a variety of reasons and section 47(4) allows a tenant to dispute the landlord's notice to end tenancy under

this section. The burden of proving there are grounds to end the tenancy rests with the landlord.

Section 47(1)(c) of the *Act* authorizes a landlord to end a tenancy if there are an unreasonable number of occupants in a rental unit.

On the basis of the testimony of the Parties, I find that there have never been more than two people living in the rental unit during this tenancy. I find, based on common sense and the tight housing market in this area of the Province that two people living in a one bedroom condominium is not unreasonable, even if it is only 450 square feet.

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if the tenant breaches a material term of the tenancy agreement and does not correct the breach after the landlord gives written notice to correct the breach. Having reviewed the documentary evidence before me, I find that the Landlord and the Tenant communicated about the issue via email, but that the Landlord did not advise the Tenant in writing that this was a material term (email is not considered “in writing” by the Residential Tenancy Branch). Residential Tenancy Branch Policy Guideline 8 defines a material term as a term that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

I find that the Parties signed an addendum to the tenancy agreement setting out that “This agreement is between the landlord & tenant / [landlord’s & tenant’s names] (just 1 tenant)”. However, I find that this clause does not clearly set out that the Parties intended the Tenant to be restricted to living alone in the rental unit. Rather, the clause addresses that the tenancy agreement is between the named Landlord and Tenant. The Landlord appears to believe that everyone who lives in the rental unit should be on the tenancy agreement; however, this is not a requirement of the *Act*, Regulation or, I find, the tenancy agreement.

I find that the Landlord has failed to establish that there is a clause in the tenancy agreement that limits the number of occupants to one person, unless the Landlord gives permission for additional occupants or that this is a material term in the tenancy agreement.

The Landlord expressed concern about the current Tenant, based on her bad experience with former tenants. However, the Landlord also said that she has not had any trouble with the current Tenant.

Based on all the evidence before me overall, I find the Tenant is successful and I cancel the One Month Notice pursuant to section 47(4) of the *Act*. The tenancy continues until it is ended pursuant to the *Act*.

Since the Tenant was successful in his Application, I award him recovery of the filing fee of **\$100.00** pursuant to section 72 of the *Act*. I authorize the Tenant to deduct the amount of \$100.00 from one future rent payment in this regard.

Conclusion

The Tenant is successful with his Application to set aside the One Month Notice. I authorize the Tenant to deduct \$100.00 from one future rent payment, as full recovery of the filing fee. 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: March 15, 2019

Residential Tenancy Branch