



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated January 18, 2019 ("1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 46 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant stated that she did not receive the landlord's written evidence package but she knew he was relying on the same text messages that she already provided as evidence for this hearing. The tenant claimed that she did not have any objection to me considering the landlord's evidence at the hearing or in my decision.

The tenant confirmed receipt of the landlord's 1 Month Notice on January 18, 2019, by way of a copy left in her mailbox. The landlord confirmed the same date and method of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was

duly served with the landlord's 1 Month Notice on January 18, 2019.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for cause?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions are reproduced here. The important and relevant aspects of the tenant's claims are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on June 30, 2014. Monthly rent in the current amount of \$843.00 is payable on the first day of each month. The tenant continues to reside in the rental unit. The rental unit is the basement of a house, where the landlord occupies the upper floor.

The landlord said that the tenant paid a security deposit of \$325.00, while the tenant claimed that it was \$375.00. The landlord stated that a written tenancy agreement was signed by the parties, while the tenant disagreed. No copy of any tenancy agreement was provided for this hearing.

Neither party provided a copy of the 1 Month Notice for this hearing. However, both parties agreed to the content of the notice. They agreed that it was dated for January 18, 2019 and the effective move-out date was March 1, 2019. They agreed that the notice indicates the following reason for ending the tenancy:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The tenant seeks to cancel the 1 Month Notice. The landlord seeks an order of possession based on the 1 Month Notice. The tenant also seeks that the landlord comply with the *Act* by providing her proper written notice prior to entry into the rental unit and proper notices of rent increases. The tenant also seeks a refund of \$733.50 that she said she overpaid in rent, due to rent increases since September 2017.

The tenant seeks \$733.50 for additional rent paid pursuant to alleged illegal rent increases in September 2017 where her rent was increased from \$782.50 to \$811.00 and again in October 2018, where her rent was increased from \$811.00 to \$843.00. Both parties agreed that the tenant did not receive Notices of Rent Increase ("NRI") on the approved Residential Tenancy Branch ("RTB") forms for the above rent increases, but that the tenant agreed to pay in text messages to the landlord. The tenant said that she felt compelled to agree to the rent increases because she was worried about being evicted from the rental unit. Both parties agreed that the above rent increases were within the *Regulation* amount set for each relevant year.

The landlord testified that he issued the 1 Month Notice because the tenant breached a material term of the tenancy agreement by refusing to allow access to the rental unit for inspections, required by section 29(a) of the *Act*. The landlord claimed that since the beginning of the tenancy, he only inspected the rental unit once on March 17, 2017. He said that he asked the tenant in December 2018 to inspect the unit and the tenant did not reply, so he asked her again twice and she refused saying she was dealing with a lot and to inspect later so he agreed. The landlord explained that he asked to inspect on January 8, 2019 but the tenant did not reply so he posted a notice to her door on January 10 in order to inspect on January 12 at 7:00 p.m. and if the tenant was not ready, to let him know. He claimed that the tenant refused inspection because she said he did not give a good reason, so he reproduced the relevant section of the *Act* and sent it to the tenant by way of a text message. He said that the tenant continued to deny entry, the smoke alarm kept beeping in her unit, and since he could hear it upstairs where he was living, it was a safety issue for his family and children. He stated that he lost trust for the tenant and she has a lack of judgment for his family's safety.

The tenant testified that the landlord already inspected her rental unit twice, as once was a City inspection. She said that the landlord does not give her proper written notice for inspections, he only sends her text messages which are not valid for written notice. She stated that she told the landlord that text messages cause her anxiety and depression and that she already has to use text messages as a primary method of communication at work. She said that she did not receive the landlord's notice on her door on January 10 and she has refused entry without proper notice, especially when

the landlord does not give a reason for inspection. She agreed that she denied inspection in December 2018 during the holidays because she was going through a lot. She said that there was one week where her smoke alarm was beeping because the battery was low, there was no safety issue, and the landlord gave her a new smoke alarm which she replaced herself.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on January 18, 2019 and filed her application to dispute it on January 27, 2019. Accordingly, I find that the tenant's application was filed within the ten day time limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the 1 Month Notice is based.

On a balance of probabilities and for the reasons stated below, I find that the landlord did not issue the 1 Month Notice for a valid reason. I find that the tenant did not breach a material term of the tenancy agreement and the landlord did not give the tenant appropriate time to correct any potential breach after any written notice.

I find that the landlord failed to show that an inspection of the rental unit was a "material term" of the tenancy agreement. The landlord did not even provide a copy of the tenancy agreement for this hearing. The tenant is entitled to a reason as to why an inspection of the rental unit is required by the landlord, as per section 29 of the *Act*. Although the landlord said that security was a concern when the fire alarm was beeping, the landlord simply provided a new smoke alarm to the tenant in order for her to replace it, since the battery was low. If it was such a material term or a concern to the landlord, he could have asked to inspect the suite at that time and install the smoke alarm himself.

Further, without providing a notice of breach of the material term and a reasonable timeline for the tenant to correct any potential breach, the landlord has not fulfilled the requirement under the 1 Month Notice for this reason.

Accordingly, I allow the tenant's application to cancel the 1 Month Notice. The landlord's 1 Month Notice, dated January 18, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the tenant's application to recover \$733.50 in rent paid to the landlord pursuant to rent increases from September 2017 and October 2018. I find that the tenant agreed to pay the above amounts from September 2017 to present, which is approximately 1.5 years. Both parties agreed that the amounts were within the allowable *Regulation* amounts for 2017 and 2018. The tenant filed her application on January 27, 2019. The tenant's actions confirm that she did not dispute the rent increase by approaching the landlord and she did not file an application at the RTB until almost 1.5 years later, when she had already paid the new rent amount. I find that the tenant waived her rights to recover the overpayment and she agreed to pay the rent increases as allowed by section 43 of the *Act*. The tenant did not show that her tenancy was threatened or that she agreed to pay the rent increases due to duress or coercion.

I order the landlord to comply with section 29 of the *Act* prior to entering the tenant's rental unit. The landlord is required to give at least 24 hours' written notice, except for emergencies, prior to inspecting the unit and must give a reason to the tenant for the inspection as per section 29 of the *Act*. The landlord is required to give written notice in accordance with section 88 of the *Act*, as text message and email are not valid written forms for notice.

I order the landlord to comply with section 43 of the *Act* and section 22 of the *Regulation*, prior to issuing notices of rent increase to the tenant. The landlord is required to use the approved Residential Tenancy Branch form for issuing a notice of rent increase, unless the tenant agrees, in writing, to pay a rent increase.

As the tenant was mainly successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord. I order the tenant to reduce her future monthly rent due to the landlord for this rental unit and this tenancy, by \$100.00, to account for the filing fee award.

Conclusion

The landlord's 1 Month Notice, dated January 18, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

I order the landlord to comply with sections 29 and 43 of the *Act*, prior to entering the rental unit and prior to issuing notices of rent increase to the tenant.

I order the tenant to reduce her future monthly rent due to the landlord for this rental unit and this tenancy, by \$100.00, to account for the filing fee award.

The remainder of the tenant's application is dismissed without leave to reapply.

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 18, 2019

Residential Tenancy Branch