



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT OLC PSF RR**
 CNC FFT

Introduction

This hearing dealt with two applications filed by the tenants pursuant to the *Residential Tenancy Act* (the “Act”)

The first application sought:

- Authorization to recover the filing fee for the application from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67;
- An order for the landlord to comply with the Act, Regulations or Tenancy Agreement pursuant to section 62;
- An order for the landlord to provide services or facilities pursuant to section 62; and
- An order to reduce rent for services agreed upon but not provided pursuant to section 65.

The second application sought:

- An order to cancel a One Month Notice to End Tenancy for Cause (“Notice”) pursuant to section 47; and
- Authorization to recover the filing fee for the application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance, the service of documents was confirmed. The landlord confirmed receipt of the tenant’s applications for dispute resolution and evidence. The tenant confirmed receipt of the landlord’s Notice. Based on the

testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Unrelated Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure (“Rules”) allow an arbitrator to consider whether issues are related and if they would be heard at the same time. At the commencement of the hearing, I determined the issue of whether to cancel the landlord’s one month notice to end tenancy for cause was most urgent and unrelated to the tenants’ other issues and dismissed them with leave to reapply.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The tenancy involves a basement rental unit located in the landlord’s house. The parties agree the house is old. The tenancy began on April 1, 2018. Rent was set at \$1,300.00 per month; the parties disagree as to whether internet, cable and laundry were included. Hydro was split between the parties. A tenancy agreement was never drafted or signed.

By August of 2018, there was a falling out between the landlord and the tenant and on February 26, 2019 the landlord served the tenant with the Notice. The Notice indicates an effective date of March 31, 2019. The tenant acknowledges receiving the Notice on February 26, 2019, and the reason for ending the tenancy on the Notice is:

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

During the hearing, the landlord advised he had recently served the tenant with a 2 Month Notice to End Tenancy for Landlord’s Use and no longer wants to pursue the One Month Notice. The tenants were in agreement with the landlord’s request to withdraw it.

Analysis

Policy Guideline PG-11 [Amendments and Withdrawal of Notices] provides guidance to landlords and tenants regarding when a Notice to End Tenancy can be withdrawn. (excerpt reproduced below)

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

Both parties agreed the landlord could withdraw his Notice. In light of this, the landlord's Notice dated February 26, 2019 is cancelled and of no further force or effect.

Conclusion

The landlord's One Month Notice to End Tenancy for Cause is cancelled and of no further force or effect. The tenancy will continue until ended in accordance with the *Act*.

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: April 1, 2019

Residential Tenancy Branch