



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"):

- to cancel a One Month Notice to End Tenancy for Cause dated March 22, 2019, because the security deposit was not paid within 30 days ("One Month Notice");
- for an order that the Landlord's right to enter be suspended or restricted; and
- to recover the cost of their filing fee.

The Tenant, J.D., 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 Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing and confirmed their understanding that the decision would be emailed to both Parties.

The Tenant said that she served the Application and documentary evidence on the Landlord via registered mail, and she provided a Canada Post tracking number for this package. Pursuant to section 90 of the Act, I find that the package was deemed served on April 8, 2019, although the evidence before me is that the Landlord refused the Tenants' attempts to serve her by registered mail and in person. I note that refusal or neglect to accept registered mail is not a ground for review consideration under the Act.

The Landlord called into the hearing 19 minutes late. She said she had difficulty getting through. I advised the Landlord that the Tenant, J.D., was in the teleconference, I affirmed the Landlord, as I had done with the Tenant, and I continued with the hearing. The Tenant and I had waited five minutes for the respondent Landlord to attend before commencing the hearing.

The Landlord advised that she did not serve the Tenants with the documentary evidence she had uploaded to the RTB system, because she did not know she was supposed to do this. I advised the Landlord that it was her responsibility to determine her obligations in this regard, and that the RTB has information officers available at our toll free number to help parties involved in this process.

I informed the Parties that I would not consider the Landlord's documentary evidence, since it was not served on the Tenants. I explained it would be administratively unfair to consider this evidence, as the Tenants would not know the case they had to meet from the Landlord. I find this to be different from the Landlord's situation of not having the Tenants' documentary evidence before her, because it was the Landlord's choice to refuse the Tenants' attempts to serve her with this information.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants applied for matters which I find are unrelated, the most urgent of which is the application to set aside a One Month Notice. I find that the Tenants' claim for an order suspending or restricting the Landlord's right to enter is not sufficiently related to the claim to cancel the One Month Notice. I will, therefore, only consider the Tenant's application to set aside the One Month Notice and to recover the filing fee at this proceeding. The Tenants' other claim is dismissed, with leave to re-apply.

During the hearing, the Parties discussed the possibility of a settlement; however, they were not able to come to mutually agreeable terms, so I will make a decision in this matter based on the admissible evidence before me.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or is it valid?
- Is the Landlord entitled to an order of possession based on the One Month Notice?
- Are the Tenants entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The Parties agreed that the tenancy began in early January 2019, when the Tenant, D.O., and his son moved into the rental unit. The Landlord said she was overseas in December 2018, and received a message from D.O. saying that he and his son were homeless. The Landlord said she told D.O. that she wanted to sell the house, but that he could move in. The Parties agreed that this was an oral tenancy agreement with a monthly rent of \$780.00, due on the first of each month. The Landlord said she expected D.O. to pay a security deposit, although she did not explain or provide any documentary evidence as to how this obligation was communicated to him prior to the written tenancy agreement being signed by the Parties.

The Landlord said she returned to Canada on February 18, 2019. She said she went to the rental unit on February 21, 2019, with a written tenancy agreement that started on March 1, 2019, and which the Parties signed. The Landlord said: "At the time, [D.O.] said that 'I hope [J.D.] likes it and will buy it. Then [J.D.] told me that the house was too small for their family, so I knew then that they were not going to stay.

However, the Tenant, J.D., said in the hearing:

I wasn't there in January or most of February. That was her deal with [D.O.]. Sometime mid-February he had asked if we could all move in with our dogs, and she said that was fine. I started paying rent in March. I didn't see her until she came to look at the shed in the back around the 25th [of February]. That's when she said she was going to sell it. I asked if we could please stay until the end of June for the kids' school, but she said no. It wasn't until March 4 that she had a tenancy agreement to sign and back-dated it to the first.

The Landlord said the security deposit was not paid until she served the Tenants with the One Month Notice, despite it being part of the written tenancy agreement. The fourth clause in the tenancy agreement says: "A security deposit of \$390.00 is payable upon occupation of the premises." The Landlord said she served the Tenants with the One Month Notice on March 22, 2019, and that the Tenants paid the security deposit to her on March 25, 2019. The Tenants also applied for dispute resolution on March 30, 2019.

The Tenant said that the One Month Notice is not valid, because the Landlord's true intention was evident in a text she sent them on March 10, 2019. The Tenants provided a transcription of the text, which states the following:

Hi [Tenants],

Things are moving more rapidly than I expected. One couple saw the house last fall when I met with the realtor, word of mouth now has brought out other interested parties. It isn't listed. I have an offer so I would like to give you lots of notice. Today being March 10, 2019. It will give you that much extra time, extending your time till June will not be feasible. I want the house to be vacant May 1, 2019. Wishing you luck in finding your perfect home for your new beginning with new and extended family, looking forward to a new baby is always exciting. Hope to meet the new member.

[Landlord]

[reproduced as written]

The Landlord said she thinks it's "pretty shoddy" of the Tenants to dispute her One Month Notice. She said, "...considering everything I've done for them. I knew they weren't going to buy. I knew they were leaving. I sent that letter thinking they'd appreciate the notice. I've had tenants before and have never had a problem."

The One Month Notice was:

- signed by the Landlord,
- dated March 22, 2019,
- gives the address of the rental unit,
- states the effective date of the Notice being May 1, 2019,
- gives the ground as being the security deposit not being paid within 30 days, as required by the tenancy agreement, and
- is in the approved form.

The Parties agreed that the Landlord served the One Month Notice on the Tenants in person on March 22, 2019. The Tenants applied for dispute resolution on March 30, 2019.

Analysis

Based on the Parties' consistent evidence in the hearing, I find that it is more likely than not that the Landlord intended to end the tenancy because she was selling the residential property, not because the Tenants did not pay the security deposit soon enough. The undisputed evidence before me is that before the Landlord allowed the Tenant, D.O., to move into the rental unit with the oral tenancy agreement, she told him that she intended to sell the residential property.

I find the Tenant, J.D.'s, evidence to be more reliable and credible than that of the Landlord, because it is internally consistent and consistent with the Landlord's evidence of wanting to sell the property. I find on a balance of probabilities that the Landlord wanted the Tenants out of the rental unit prior to the time that the appropriate notice would require them to be out, so she relied on the delayed payment of the security deposit in an attempt to gain an earlier vacancy date.

Further, I find it more likely than not that the tenancy agreement was signed on March 4, 2019, and back-dated to March 1, 2019, as the Tenant said in the hearing. I find that the Landlord did not advise the Tenants that they had to provide a security deposit until March 4, 2019. As such, the One Month Notice was premature; it had not had been more than 30 days since the Tenants were required to pay the security deposit under the tenancy agreement. Section 47 of the Act states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
[emphasis added]

As such, I find that the One Month Notice is invalid because it is not based a ground that is consistent with the Act, and because the Landlord gave the Tenants the wrong type of notice to end tenancy, given her intentions.

Based on the evidence before me, I cancel the One Month Notice and find it is of no force or effect. I order the tenancy to continue until ended in accordance with the Act.

As they were successful in their Application, I award the Tenants with recovery of the \$100.00 filing fee for this Application. The Tenant's claim for an order that the Landlord's right to enter be suspended or restricted is dismissed with leave to reapply. The Parties should also contact the Residential Tenancy Branch for information on how a tenancy might end when the property is being sold.

Conclusion

The Landlord served the Tenants with a One Month Notice that was invalid, due to the ground for the notice being premature. I also found it did not correspond with the

Landlord's real reason for ending the tenancy – to sell the residential property. The One Month Notice is cancelled and is of no force or effect. The tenancy continues until ended in accordance with the Act.

I severed the Tenant's application for an order that the Landlord's right to enter be suspended or restricted, because it was unrelated to the other, primary claim, so I dismiss it with leave to reapply.

I award the Tenants recovery of the filing fee. I authorize them to reduce one future rent payment by \$100.00 in satisfaction of this award.

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: May 16, 2019

Residential Tenancy Branch