



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, LRE, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling two notices to end tenancy – Section 46 and 47;
2. An Order restricting the Landlord’s access to the unit – Section 70; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy for unpaid rent valid?

Is the notice to end tenancy for cause effective or valid?

Is the Tenant entitled to a cancellation of the notices to end tenancy?

Is the Tenant entitled to an order restricting the Landlord’s access to the unit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on March 15, 2014. Rent of \$930.00 or 935.00 is payable on or before the first day of each month. At the outset of the tenancy the Landlord collected \$412.50 as a security deposit. On May 3, 2019 the Landlord served the Tenant with a 10-day notice to end tenancy for unpaid rent (the “Rent Notice”) both on the door of the unit and in person to an adult residing in the unit. The Rent Notice sets out unpaid rent of \$800.00 due October 1, 2018. On May 3, 2019 the Landlord also

served the Tenant in the same manner with a one month notice to end tenancy for cause (the "Cause Notice"). The Cause Notice sets out 3 reasons without any details either inserted into the Cause Notice or attached to the Cause Notice. The 3 reasons are as follows:

- The Tenant has allowed an unreasonable number of occupants in the unit/site;
- The Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- The Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The Landlord states that the outstanding rent set out on the Rent Notice is in relation to an occupant of the unit. The Landlord provides a copy of the tenancy agreement that sets out under section 44 "If another person moves in there is \$100.00 per month and the applicant must be approved by Landlord". The Landlord states that another person applied to reside in the unit and is occupying the unit with the Tenant but has not been approved for that occupation by the Landlord.

The Landlord states the Tenant was given a letter in July 2018 in relation to another person occupying the unit and in relation to this person using marihuana in the parking area. It is noted that the Landlord provided a copy of a document entitled "Incident Report" dated July 20, 2018 and refers to a guest of the Tenant. The Landlord is not sure that any other letter was provided to the Tenant in relation to the details for the Cause Notice but states that the Tenant is fully aware of the reasons for the Cause Notice. The Landlord states that a letter was provided to the Tenant on May 21, 2019 in relation to the issues. The Landlord states that the Tenant was spoken to verbally about marihuana use by an occupant of the unit. The Tenant states that no letter was ever received by the Tenant in relation to the Cause Notice and that the Tenant is not aware of the details for the reasons stated on the Cause Notice. The Tenant states that the Landlord's evidence at the hearing is convoluted and that it is not understood by the Tenant.

The Tenant states that the Landlord has been entering other tenants' units without right. The Tenant states that this has been reported to the Tenant from other tenants. The Tenant confirms that no witness letters have been provided to support the Tenant's evidence of illegal entry. The Landlord states that no entry has ever been made into the Tenant's unit or any other units.

Analysis

Section 52(e) of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must, when given by a landlord, be in the approved form. The approved form for a landlord's one month notice to end tenancy for cause includes a section for the provision of details for the reasons stated on the notice and sets out that the notice may be cancelled if the details are not included or attached to the notice. Where a tenant disputes a notice to end tenancy given by a landlord, the landlord carries the burden of proof to establish that the notice is both effective and valid for the stated reasons.

It is undisputed that the Landlord did not provide any details for the reasons to end the tenancy either attached or in the details for the Cause Notice. The Landlord's only evidence of the Tenant's awareness of the reasons is a letter from July 2018 that refers to a guest smoking marihuana. This letter or "Incident Report" does not provide any details in relation to an unreasonable number of occupants and does not provide any details in relation to any sublet or assignment of the unit. Further as this letter was provided some nine months before the Cause Notice was served I consider this letter far too dated to be considered now relevant to the Cause Notice. The Landlord's evidence of having provided a letter some weeks after the Cause Notice was served is not sufficient to meet the Landlord's obligation to provide details with the Cause Notice. For these reasons and as the Tenant's evidence is that the Tenant is not aware of the details of the cause and has not received any letters specifically referring to the details of the Cause Notice I find on a balance of probabilities that the Landlord has not substantiated that the Cause Notice is effective to end the tenancy.

As the tenancy agreement requires the Landlord's approval for another occupant to reside in the unit thereby entitling the Landlord to extra rent and as the Landlord has not provided such approval I find that the Landlord is not entitled to any greater rent than what is currently payable. As a result, I find that the Rent Notice is not valid and that the Tenant is entitled to its cancellation. As the Cause Notice is not effective and as the Rent Notice is not valid I find that the tenancy continues until ended as allowed under the Act.

As there is no evidence to support the Tenant's oral evidence and as the Landlord's oral evidence contradicts the Tenant's oral evidence I find on a balance of probabilities that the

Tenant has not substantiated that the Landlord has been entering any units without right. I therefore dismiss the Tenant's claim restricting the Landlord's access to its unit.

As the Tenant's claims in relation to the notices to end tenancy has been successful I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Rent Notice is not valid for the stated reason and the Cause Notice is not effective to end the tenancy. The Rent Notice is cancelled and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 17, 2019

Residential Tenancy Branch