



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, FFT, OLC, LRE, RR

Introduction

On May 23, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel the Landlord's One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*"), seeking a repair order pursuant to Section 32 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking to suspend or restrict the Landlord's right to enter the rental unit pursuant to Section 70 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On June 13, 2019, the Tenants amended their Application seeking to increase the request for monetary compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing with X.G. attending as an advocate for the Tenants. The Landlord attended the hearing with M.Z. attending as the Landlord's agent. All in attendance provided a solemn affirmation.

X.G. confirmed that the Landlord was served the Notice of Hearing package and some evidence by registered mail on May 23, 2019 and the Landlord confirmed receipt of this package. As per this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenants' Notice of Hearing package and some evidence, and I continued the hearing.

X.G. confirmed that the Landlord was served the Amendment and the rest of the Tenants' evidence by registered mail on June 13, 2019 and the Landlord confirmed receipt of this package. As per this undisputed testimony, I am satisfied that the Landlord was served with the Tenants' Amendment and evidence.

M.Z. confirmed that the Tenants were served with her evidence on June 4, 2019 by registered mail and on June 27, 2019 by hand. X.G confirmed receipt of this package.

As per this undisputed testimony, as this evidence was served pursuant to the timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenants' were served with the Landlord's evidence. As such, I have accepted this evidence and will consider it when rendering this decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's One Month Notice to End Tenancy for Cause (the "Notice"), that his other claims would be dismissed, and that the Tenants are at liberty to apply for these claims under a new and separate Application.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's One Month Notice to End Tenancy for Cause dismissed?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 25, 2018 and that rent was currently \$2,300.00 per month, due on the twenty-fifth day of each month. A security deposit of \$1,150.00 was paid.

M.Z. advised that the Notice was served to the Tenants by registered mail on May 13, 2019 and X.G. advised that this was received on or around May 15, 2019. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has: put the landlord's property at significant risk" and "*Residential Tenancy Act* only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement."

Settlement Agreement

I raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenant agreed as follows:

1. The One Month Notice to End Tenancy for Cause of May 13, 2019 is cancelled and of no force or effect.
2. The Tenant and Landlord agreed that the Tenant will have possession of the rental unit but must temporarily vacate the rental unit by **September 1, 2019 at 1:00 PM** to allow the Landlord to conduct necessary repairs due to a flood, which are estimated to take approximately two to three months.
3. The Tenants must be allowed to move back into the rental unit once these repairs are completed. The tenancy will continue at the same rent and under the same terms of the original tenancy agreement.

4. During this temporary vacancy, the Tenants will not be responsible for paying rent.
5. As a condition of this settlement, the Tenants are permitted to withhold the amount of \$2,300.00 from a future month's rent.
6. As a condition of this settlement, the Tenants gave up the right to seek relief on the other claims in this Application.
7. The Landlord should provide the Tenants with written notice to update them on the progress of the repairs. The Landlord must provide the Tenants with at least one, whole month's written notice to advise them of the date that the repairs will be completed and when they can move back into the rental unit.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of May 13, 2019 to be cancelled and of no force or effect.

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: July 8, 2019

Residential Tenancy Branch