



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice") and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the parties confirmed they had received the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to prove that he has cause to end this tenancy?

Is the tenant entitled to recovery of his filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on January 1, 2003, for a beginning monthly rent of \$950.00, and for a current monthly rent of \$1,352.03.

The 1 Month Notice to End Tenancy for Cause which is the subject of this application, was dated May 31, 2019, and listed an effective move out date of June 30, 2019. The evidence showed that the landlord served the Notice to the tenant by attaching it to the tenant's door, on an unknown date. The tenant submitted that he received the Notice, but did not remember the date. I note the tenant's application was filed within the 10 days of the date listed on the Notice.

A copy of the Notice was supplied into evidence, listing as cause that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The top portion of the Notice was illegible so that any other boxes that were marked could not be read.

The tenant's evidence showed that the parties were in a dispute resolution hearing on May 14, 2019, on the tenant's application seeking cancellation of the landlord's previous 1 Month Notice to End Tenancy for Cause. That Notice was dated March 3, 2019, listing an effective move-out date of April 30, 2019. The March 3, 2019, Notice listed as ground to end the tenancy as:

The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

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

In a decision on May 14, 2019, another arbitrator cancelled the landlord's March 3, 2019, Notice, citing that as no tenancy agreement was entered into evidence, the landlord was unable to prove that the tenant had breached a material term of the tenancy agreement.

The other arbitrator also cited that the landlord failed to provide sufficient documentary or photographic evidence to prove on a balance of probabilities the other cause listed on the Notice.

In this case, the landlord submitted the written tenancy agreement and photographic evidence, and stated that he was unable to upload this evidence in time for the last hearing.

The landlord confirmed that this would be the evidence in support of his Notice for the previous hearing. Although the top portion of the current Notice to end the tenancy was illegible, I heard oral evidence that both issues on the previous Notice of March 3, 2019, related to the issue(s) in this Notice.

In response to my inquiry, the landlord stated there were no new issues which had occurred during the time he served the tenant the March 3, 2019, Notice and the May 31, 2019, Notice. The landlord also confirmed that he served the tenant a new Notice in order to be able to submit his evidence for a new hearing, for the same reasons.

Analysis

In this case, the undisputed evidence is that the landlord sought to end the tenancy by issuing a One Month Notice to End the Tenancy for Cause and that Notice was cancelled by another arbitrator.

The landlord confirmed issuing the tenant another Notice as he was unsuccessful with the previous Notice, listing one of the same reasons. The landlord also confirmed that nothing new had happened between the 2 Notices, but that he would take the opportunity to submit evidence he failed to submit for the hearing on his first Notice.

I therefore find this matter has been decided upon by another arbitrator in a hearing and decision of May 14, 2019.

The parties were informed during the hearing, that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision May 14, 2019, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

I therefore order that the Notice dated and signed May 31, 2019, be cancelled and is of no force or effect, with the result that the tenancy continues until it may otherwise end under the Act.

I allow the tenant recovery of his filing fee of \$100.00, and direct him to deduct this amount in his next or a future month's rent payment in satisfaction of his monetary award. The tenant should inform the landlord when he is withholding this amount. The landlord may not serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent in this instance.

I inform the landlord of Residential Tenancy Branch Policy Guideline 6. This Guideline states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord. The repeated issuance of unsubstantiated Notices to the tenant could be construed as such a breach of the tenant's rights, for which the tenant could seek compensation.

Due to this, I must caution the landlord that issuing repeated Notices to the tenant for the same reasons, such as is the case here, could result in the tenant being successful in future circumstances where he may seek compensation for a loss of quiet enjoyment and a devaluation of the tenancy.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's Notice and the Notice is cancelled with the effect that the tenancy will continue until ended in accordance with the Act.

The tenant is directed to withhold \$100.00 from his next or a future month's monthly rent payment in satisfaction of his monetary award for recovery of the filing fee.

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 19, 2019

Residential Tenancy Branch