



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, LRE, OLC, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed receipt of the notice of hearing package via Canada Post Registered Mail. The landlord disputed this stating that a notice of hearing was received, but that the package was not complete as the tenant's application for dispute was not received. Extensive discussions between the two parties concluded in that the landlord was able to proceed as there were all of the issues are known for the landlord to proceed. On this basis, I find that both parties have been sufficiently served and as there are no issues with service, both parties are deemed served as per section 90 of the Act.

The tenant stated that the landlord was served with the tenant's submitted documentary evidence via Canada Post Registered Mail on July 9, 2019. The landlord confirmed receipt of this package, but that the emails were not provided to the landlord. The tenant did clarify that he did not provide all of the documentary evidence to the landlord,

but was unable to provide any direction on what documents were excluded. Both parties were advised that the tenant's evidence shall be excluded from consideration as the tenant was unable to provide details of what was included or not in the tenant's evidence. Both parties were advised that the evidence could be referred to during the hearing and that a finding would be made. During the hearing the tenant made no references to his documentary evidence.

Both parties confirmed the landlord served the tenant with the submitted documentary evidence on July 21, 2019 by placing it in the tenant's mailbox. The tenant confirmed receipt of the contents, but argued that the landlord's evidence was submitted late and should be excluded from consideration. The landlord argued against this stating that the evidence was served within the allowed timelines. The tenant was asked if there were any obstacles for the tenant in responding to the landlord's documentary evidence. The tenant responded by stating, "no". As the tenant is able to respond to the landlord's documentary evidence without an adjournment, I find that the hearing may proceed with the landlord's documentary evidence.

Preliminary Issue(s)

At the outset, the tenant's application was clarified. The tenant has requested an order cancelling the 1 month notice, recovery of the filing fee, a monetary claim for compensation, an order for the landlord to comply and an order to set conditions or suspend the landlord's right to enter the rental unit.

The tenant stated that he seeks an order for the landlord to provide proper notice when attending the rental property. The landlord stated that there were no issues with this and that they would happily comply. As such, no further action is required for this portion of the claim.

The tenant stated that the request for the landlord to comply and a monetary claim of \$500.00 were unrelated to the tenant's application to cancel the 1 month notice.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss, for an order for the landlord to comply with the Act. As these sections of the tenant's application are unrelated to the main section

which is to cancel the notice to end tenancy issued for cause, I dismiss these sections of the tenant's claim with leave to reapply.

The hearing shall proceed on the tenant's request to cancel the 1 month notice and the request for recovery of the filing fee.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This is a tenancy for a furnished room which began on November 1, 2018 on a fixed term until October 31, 2019 as per the submitted copy of a signed tenancy agreement dated October 18, 2018. The monthly rent is \$1,000.00 payable on the 1st day of each month.

Both parties confirmed that on June 11 2019, the landlord served the tenant with the 1 Month Notice dated June 7, 2019 via Canada Post Registered Mail. The 1 Month Notice sets out an effective end of tenancy date of July 31, 2019 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The details of caused listed on the notice state:

See attached Separate Sheet (1 page)

A 1 page typed letter dated June 7, 2019 states in part,

On April 27, 2019... tenant, S.S.N.(also called M.) "informed me that he wanted to move at end of April 2019 because another tenant of the house, B.L. banged on his room door and yelled "I don't like you! I don't want you to live here, go away, move now!" He wanted to move with only 3 days notice. I said one full month advanced notice is required...M. agreed to move out May 31.

On May 31, 2019...M. was cleaning the bathroom with the door shut and B. came out of his room and yelled at M. saying "I'll kill you, I'll kill you right here, right now!", my property manager, R.H. and myself both heard the threats and would have called 911 except B. returned to his room.

The landlord clarified that all of the reasons selected are in relation to one incident as provided above in the 1 page typed letter dated June 7, 2019.

The landlord has stated that the tenant has threatened to "Kill You" (another tenant). The landlord stated that they were present and witnessed the threat against another tenant. The tenant, B.L. disputes this claim arguing that there is no statement by the "victim", M. The tenant further argues that at no time were the police called or the tenant, B.L. arrested.

The landlord confirmed that the "victim" tenant has not filed any complaints with the landlord, nor are they aware of any police action.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed testimony of both parties that the landlord served the tenant with a notice to end tenancy for cause dated June 7, 2019.

The landlord has argued that the tenant has threatened to "Kill You" (another tenant) which has been disputed by the named tenant. The landlord relies solely on their testimony and statements that they were a witness to this incident. The tenant has stated that there is no complaint by the "victim" nor has anything been reported to the police. The tenant stated that no "police action" has been taken. The tenant argues that the landlord's claims are false.

In this case, I find that the landlord has failed to provide sufficient evidence to satisfy me of a "threat" made by the tenant against another tenant. Both parties rely solely on their testimony and statements. The landlord has not provided any supporting evidence of this threat for example a statement by the "victim" nor any complaints filed to the police for action. I find that without sufficient supporting evidence that the landlord has failed to establish a claim that the tenant threatened another tenant. The 1 month notice dated June 7, 2019 is set aside and the tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application to cancel the 1 month notice is granted.

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: August 06, 2019

Residential Tenancy Branch