



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with the tenants' 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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenants' Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The landlord testified that the 1 Month Notice, dated May 19, 2019, was personally served to the tenants on the same date. The tenants indicated during the hearing that there was no issue with the service of the 1 Month Notice. Accordingly, I find that the 1 Month Notice was duly served to the tenants in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy originally began in August of 2017 when the tenants had rented the basement portion of the home. In August of 2018, the tenants rented the entire home for \$1,900.00 per month, with an oral agreement that they may rent out rooms to students in the upstairs portion of the home. The tenants paid a \$950.00 security deposit, which the landlord still holds.

The landlord issued the 1 Month Notice on the following grounds:

1. The tenant or a person permitted on the property by the tenant has:
 - i) put the landlord's property at significant risk.

The landlord testified that they have been informed by their home insurer that they are not eligible for home insurance due to the number of occupants in the home. The landlord testified that they are not currently insured, and as a result the tenants and the additional occupants have put the landlord's property at significant risk. The landlord included letters from their insurance company dated November 9, 2018, February 4, 2019, and February 6, 2019. The landlord also provided copies of email correspondence with another insurance company dated February 14, 2019.

The letter dated November 9, 2018 reads: "This is to confirm that we do not offer coverage for housing multiple students, and if you did are ability to insure this location would be impacted. We would allow coverage for 1 student in the house." On February 4, 2019, the landlord received a letter stating "after careful review of the policy mentioned above and based on new information, the following modifications will be made to the policy as of the effective date indicated above: as a result of the recently submitted information, we are unable to insure the above listed property. The property does not meet our current underwriting guidelines". The February 6, 2019 letter states: "further to our telephone conversation today, please accept this letter as confirmation that the following was discussed for your policy. 'Hi there, this is to confirm we do not have coverage for more than 1 temporary student in the house hold at a time". The landlord included email correspondence dated February 14, 2019 from another insurance company. The landlord inquired: "as per our telephone conversation, please confirm if you can provide home insurance for my property....The home is rented out to a tenant, his spouse and child however, they have further rented out bedrooms to five separate international students". The agent replied: "thanks for reaching out to us for a quote on your rental dwelling. I have reviewed our underwriting guidelines and unfortunately this location does not meet the eligibility criteria. Due to having multiple tenants occupying your dwelling, we cannot offer coverage at this time."

The tenants were previously served with a 1 Month Notice for the same reason on November 23, 2018, which was cancelled by the Arbitrator on January 15, 2019 after a hearing was held on the same date. Both parties confirmed that the landlord has filed for a judicial review, and both parties were awaiting a date for the review.

The landlord testified that they had issued a new 1 Month Notice as they have obtained additional evidentiary materials since the last hearing date to support that the tenants posed a risk to their property.

The tenants testified in the hearing that the circumstances have not changed since the last 1 Month Notice was issued. The tenants do not dispute that they rent the home to international students, and although at the time of the hearing they had 4 students, they occasionally have 5. The tenants confirmed in the hearing that their intention was to continue renting rooms to international students as the landlord had originally agreed to this arrangement. The tenants testified that the landlord did have the ability and option to obtain home insurance, but have opted not to. The tenants maintain that they have checked with the landlord's insurer, who confirmed that the landlord did have an option to obtain home insurance coverage under a different policy.

Analysis

Although both parties confirmed that the tenants were previously served with a 1 Month Notice, which was cancelled by the Arbitrator, and that matter is awaiting judicial review, I find that this is a new 1 Month Notice issued by the landlord. Although pertaining to the same tenancy, and referencing the same grounds, I find that this is a separate 1 Month Notice, and the landlord has produced new evidentiary materials that were not presented for the hearing pertaining to the previous 1 Month Notice. Accordingly, I will consider this new 1 Month Notice on its individual merits.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants filed their application on May 27, 2019, 8 days after receiving the 1 Month Notice. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

I am satisfied that the landlord has provided sufficient evidence to support that they are no longer insured by their home insurance company due to the multiple international students residing in their home. I am also satisfied that the landlord had provided evidence to support that another insurance company had declined them insurance for the same reason.

The tenants' testimony is that the landlords still have the ability to obtain home insurance coverage under a different policy, which the landlord has opted not to do. I accept the landlord's argument that without proper home insurance coverage, their property is put at significant risk. Although I am satisfied that the landlord does not currently have home insurance coverage, in light of the conflicting testimony from the tenants, I am not satisfied that the landlord had sufficiently demonstrated that they are ineligible to obtain insurance coverage for their home under a different policy, or from a different insurer. As stated above, the burden is on the landlord to demonstrate how the tenants have significantly put the landlord's property at risk.

For the reasons outlined above, I find that the landlord has not satisfied me that they have grounds for ending this tenancy on the grounds provided on the 1 Month Notice. Accordingly, I allow the tenants' application to cancel the 1 Month Notice dated May 19, 2019, and this tenancy is to continue until ended in accordance with the *Act*.

As the filing fee is a discretionary award given to a successful party after a full hearing on its merits, I allow the tenants' application to recover the \$100.00 filing fee from the landlord. The tenants may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated May 19, 2019, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary award in the tenants' favour in the amount of \$100.00. I allow the tenants to implement this monetary award of \$100.00, by reducing a future monthly rent

payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: August 6, 2019

Residential Tenancy Branch