



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* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated June 25, 2019 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's agent, the two tenants, female tenant ("tenant") and "male tenant," and the tenants' lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had permission to speak on his behalf at this hearing. The tenants confirmed that their lawyer had permission to represent them at this hearing. This hearing lasted approximately 38 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' lawyer confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence package.

The tenant confirmed personal receipt of the landlord's 1 Month Notice on June 25, 2019. The landlord confirmed that he served the notice to the tenants using the above method on the above date. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice on June 25, 2019.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 15, 1994 with the former landlord under a former written tenancy agreement. The current landlord purchased the rental unit in 1998 and no new written tenancy agreement was signed between the parties. Monthly rent in the current amount of \$2,537.00 is payable on the first day of each month. A security deposit of \$850.00 was paid by the tenants and the landlord continues to retain this deposit. The tenants continue to reside in the rental unit. The rental unit is the basement of a house with an upper floor.

Both parties agreed that the landlord issued the 1 Month Notice with an effective date of July 31, 2019, for the following reason:

- *Rental unit/site must be vacated to comply with a government order.*

The tenants seek to cancel the landlord's 1 Month Notice, dated June 25, 2019, and to recover the \$100.00 filing fee from the landlord. The landlord disputes the tenants' application and seeks an order of possession against the tenants.

The landlord testified that he is required to comply with a government order and restore the rental property to the last approved condition. He said that he cannot have the basement be a separate unit at the rental property. He claimed that he will face prosecution by the City if he does not comply with their order to restore the property.

The landlord's agent testified that he is currently development consultant, who used to work for the City in senior positions with the permit department and the enforcement process. He maintained that the development permit, submitted by the landlord as evidence for this hearing, is an order. He maintained that as per sections 7 and 8 of the zoning development bylaw and the building bylaw, the landlord had to restore his property to the last approved occupancy. He said that there were four orders made by the City, which includes: 1) a work without permit complaint with a verbal order to comply with the bylaws; 2) a letter that ordered the owner to comply; 3) the development permit; and 4) a recent verbal order as per the inspection. The landlord's agent explained that a failure to comply with the bylaws would result in fines and even jail time, regardless of the Court or the RTB processes. He confirmed that the construction at the rental property was almost complete.

The tenants' lawyer confirmed with the landlord and his agent that the only order received from the landlord was dated September 12, 2017, and involved renovations exclusively to the upper

unit of the rental property, which was separate and distinct from the lower unit occupied by the tenants in the basement. He maintained that an order was different than the development and building permit, dated January 8, 2019, submitted by the landlord, which stemmed from the September 12, 2017 order. He stated that the renovations did not involve the tenants' rental unit and that access was not required through the rental unit. The tenants' lawyer confirmed that if the landlord intended to perform renovation or repairs, he issued the wrong 1 Month Notice to the tenants, rather than a 4 Month Notice to End Tenancy. He maintained that there was no order for the tenants to vacate the rental unit and that the tenants obtained an email from the City confirming that no other orders were issued by the City except for the September 12, 2017 order.

The tenant stated that she spoke to a City representative verbally and received an email from the City, indicating that there were no orders from the City for the tenants to vacate the rental unit.

Analysis

In accordance with section 47(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the 1 Month Notice on June 25, 2019 and filed their application to dispute it on July 3, 2019. Accordingly, I find that the tenants' application was filed within the ten day limit under the *Act*. Where tenants apply to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord did not issue the 1 Month Notice for a valid reason. I accept both parties' evidence and testimony that the City order, dated September 12, 2017, requires exclusive renovations to the upper floor of the rental property, and does not require renovations in or access through the lower basement unit where the tenants reside in the rental unit. I accept the tenants' testimony and evidence that the City confirmed that no other orders were issued to the landlord, except for the September 12, 2017 order, for renovations to be completed to the upper unit, and that the tenants are not required to vacate the lower basement rental unit.

I find that the landlord failed to provide sufficient evidence to show that the tenants are required to vacate the rental unit to comply with a government order. I do not accept the landlord's agent's evidence that the landlord's development permit is an order requiring the tenants to vacate the rental unit to comply.

Accordingly, I allow the tenants' application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated June 25, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated June 25, 2019, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession.

This tenancy continues until it is ended in accordance with the *Act*.

I order the tenants to deduct \$100.00 from future rent payable to the landlord for this rental unit and this tenancy, in full satisfaction of the monetary award for 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: September 03, 2019

Residential Tenancy Branch