



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC PSF

Introduction

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

- Cancellation of 1 Month Notices to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- An order that the landlord provide services or facilities required under the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Issue(s) to be Decided

Should the 1 Month Notice of July 2019 and August 21, 2019 be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply or provide services or facilities?

Background and Evidence

Both parties submitted little coherent evidence. The tenant gave testimony inconsistent with their own application and both parties expressed confusion about what documents had been served.

The parties said that there was a 1 Month Notice issued by the landlord sometime in July, 2019. The tenant confirmed receipt of the 1 Month Notice on or about July 19, 2019 and said they filed their application for dispute resolution on August 1, 2019. Neither party provided a copy of this 1 Month Notice into evidence.

The landlord said that they had served the tenant with a second 1 Month Notice dated August 21, 2019. The tenant, despite having filed an amendment to their application to add a claim disputing this notice, denied having been served with the second 1 Month Notice, did not recall filing their amendment and testified that they did not serve the landlord with their amendment. The landlord confirmed that they had not been served with an amendment.

The tenant gave some evidence complaining about the absence of heat in the rental unit and access to appliances. The tenant submitted into evidence copies of correspondence with the landlord and some photographs. The landlord disputed that the tenant has been denied use of facilities or amenities and said that heating system is functioning normally.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, within 10 days of service. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The parties agree that the tenant was served with a 1 Month Notice sometime in July 2019. The parties did not give testimony on the precise date on which the 1 Month Notice was served. The parties agree that the tenant subsequently filed their application to dispute the notice on August 1, 2019.

Neither party submitted a copy of the 1 Month Notice of July 2019 into written evidence. A Notice is not a trivial element of an application to dispute a Notice to End Tenancy but an essential element without which I am unable to make a finding on the reasons for this tenancy to end. In the absence of the notice to end tenancy I find there is insufficient evidence to conclude that a proper notice conforming with the form and content requirements of the *Act* was issued.

I find that the landlord has not met their evidentiary burden. Accordingly, I allow the tenant's application to cancel the 1 Month Notice of July 2019.

The tenant testified that they do not recall filing their amendment to dispute the 1 Month Notice of August 21, 2019 or receiving the Notice at all. The tenant said that they did not recall serving the landlord with their amendment. The landlord confirmed that they had not been served with the tenant's amendment.

Based on the testimonies I find that the tenant was served with the landlord's 1 Month Notice of August 21, 2019. While the tenant submits they do not recall receiving the Notice they have filed an amendment and provided a copy into written evidence.

I accept the evidence of the parties that the landlord has not been served with the tenant's amendment of September 9, 2019. As such, I find that the amendment was not served in a manner consistent with section 89 of the Act or at all and dismiss the amendment to the tenant's application.

While I have dismissed the tenant's amendment, I find there is insufficient evidence to issue an Order of Possession in the landlord's favour. While the 1 Month Notice is signed and dated, provides the address of the rental unit and the effective date of the notice, I find that there is insufficient evidence in support of the reasons for ending the tenancy. The landlord sets out in the 1 Month Notice that the reason for the tenancy to end is that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk, has caused extraordinary damage to the unit and the tenant has not done required repairs of damage to the unit. The landlord writes in the details of the cause that the tenant has not performed yard maintenance and cut the lawn. I am not satisfied with the evidence submitted by the landlord in support of the reason for ending this tenancy. I find that the correspondence and photographs submitted do not show that there is a basis for the issuance of the 1 Month Notice. As such, while I have dismissed the tenant's amendment to dispute the 1 Month Notice I decline to issue a 1 Month Notice in the landlord's favour.

In accordance with Residential Tenancy Rule of Procedure 6.6 the onus lies with the applicant to establish their claim on a balance of probabilities.

I find that the tenant has not met their evidentiary burden to show that there has been any violation by the landlord or that any service or facility has been withheld. The tenant's evidence consists of subjective complaints made by written correspondence

and testimony. I find that complaints and accusations are insufficient to establish that there is a basis for the tenant's application. I find that the tenant's evidence is merely complaints not supported in evidence. As such, I dismiss the balance of the tenant's application.

Conclusion

The tenant's application to dismiss the 1 Month Notice of July 2019 is allowed. The balance of the application is dismissed without leave to reapply.

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 30, 2019

Residential Tenancy Branch