



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, PSF, RP, MNDC, FF

Introduction

This hearing was reconvened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order in relation to a rent increase - Section 43;
3. An Order for the provision of services and facilities - Section 65;
4. An Order for repairs - Section 32;
5. A Monetary Order for compensation - Section 67; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity at both the original hearing and this reconvened hearing under oath to be heard, to present evidence and to make submissions. In the Interim Decision dated July 31, 2019 the Tenant’s claims other than the claim for cancelling the notice to end tenancy and recovery of the filing fee were dismissed with leave to reapply. The Landlord confirms that its email provided in the Tenants’ application is correct.

Background and Evidence

At the original hearing both Parties confirmed that on May 30, 2019 the Tenant received a one month notice to end tenancy for cause (the “Notice”). The reasons for the Notice are:

1. The Tenant has allowed an unreasonable number of occupants in the unit;

2. The Tenant or a person permitted on the property by the Tenant has
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - c. Put the Landlord's property at significant risk; and
3. The Tenant has assigned or sublet the unit without the landlord's written consent.

The Notice includes an attached 4 pages setting out details for the stated reasons for the Notice. At the original hearing the Landlord gave undisputed evidence that Tenant IY is the only person named as Tenant in the tenancy agreement. The Parties also gave evidence in relation to some of the reasons set out above however as the hearing time elapsed the hearing was adjourned.

At this reconvened hearing the Landlord seeks to withdraw the Notice as they believe that their evidence to support the reasons for the Notice is weak without their Witness who did not appear at the original hearing and is unavailable for this reconvened hearing. The Landlord states that this Witness would have provided 90% of the evidence required to support the reasons for ending the tenancy. The Tenant does not consent to the withdrawal if this would allow the Landlord to be able to raise the same matters again in the future.

Issue to be Decided

Is the Notice valid for its stated reasons?

Is the Tenant entitled to a cancellation of the Notice?

Is the Tenant entitled to recovery of the filing fee?

Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia:

- there are an unreasonable number of occupants in a rental unit;
- the tenant or a person permitted on the residential property by the tenant has
 - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii)put the landlord's property at significant risk; or
- the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

Section 62(2) of the Act provides that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

Given the Landlord's evidence in relation to its request to withdraw the Notice, I consider that to allow the Landlord to withdraw the Notice for lack of evidence could prejudice the Tenant if the Landlord uses the same matters to support a future notice to end tenancy for cause. For this reason and based on the Landlord's evidence of insufficient basis to support the Notice, I find on a balance of probabilities that the Notice is not valid for the reasons stated. The Tenant is entitled therefore to its cancellation and the tenancy continues. The Parties are cautioned that pursuant to section 77(3) of the Act a decision or an order of the director is final and binding on the parties.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and I order that the Tenant may deduct this amount from future rent payable in full satisfaction of this claim. As only Tenant IY is named on the tenancy agreement I grant the monetary order for the filing fee entitlement to only Tenant IY.

Conclusion

The Notice is not valid for its stated reasons and is cancelled. The tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 2, 2019

Residential Tenancy Branch