



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 an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause dated July 30, 2019 (“1 Month Notice”), and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties confirmed that they had the opportunity to review the documentary evidence from the other party prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matters

At the outset of the hearing, and by consent of the parties, the surname of the landlord was corrected to reflect the landlord’s proper surname.

In addition, although the tenant included an email address for the landlord, it was an inadvertent error as the tenant accidentally included their email address for both the landlord also. As a result, the landlord confirmed they do not have an email address and instead would prefer to receive the email by regular mail. The parties confirmed their understanding that the decision would be emailed to the tenant and sent by regular mail to the landlord.

Issues to be Decided

- Should the 1 Month Notice cancelled under the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on May 1, 2018. The parties agree that the 1 Month Notice was dated July 30, 2019. The tenant affirmed that she received the 1 Month Notice on July 31, 2019. The 1 Month Notice has an effective vacancy date of August 31, 2019. The tenant filed their application to cancel the 1 Month Notice on August 1, 2019.

On the 1 Month Notice, the landlord has alleged three causes, which are:

1. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
2. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.
3. The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord wrote in the Details of Cause portion of the 1 Month Notice the following:

On July 11/19 I inspection the carriage house and found a large puddle of a liquid on the floor. When I asked [the tenant] where the water came from she replied My Air conditioner.

[Name of tenant anonymized to protect privacy]

Regarding the first cause listed above, the landlord testified that upon inspecting the rental unit, the landlord witnessed a large puddle of water, that the landlord stated was six feet by eight feet wide. The landlord confirmed they did not submit photographic evidence of a puddle of water. The photos referred to by the landlord were in the garage below and were blurry and in black and white. The landlord stated that she brought in photos to the Service BC office and that they were faxed to the RTB. The landlord was not aware that faxed photos would be black and white and blurry. The landlord did not submit the original photos by mail to the RTB for consideration.

The tenant did not agree with the landlord's version of the water but did admit that she is using an air conditioner.

Regarding the second cause listed, the landlord stated that she did not know if using an air condition was illegal or not, but alleged that using an air conditioner without the consent of the landlord might be. The parties were advised during the hearing that the use of a portable air conditioner is not illegal and as a result, this cause was dismissed during the hearing due to insufficient evidence from the landlord, which I will address further below.

Regarding the third cause listed, the landlord claimed that the six foot by eight foot wide puddle of water from the tenant's air condition could be considered extraordinary damage to the rental unit. The parties were advised that I did not have any photographic evidence to support such a large puddle and the tenant disputed the 1 Month Notice, so the onus of proof was on the landlord to provide sufficient evidence. The landlord confirmed that other than the blurry, black and white photos submitted via Service BC of the garage ceiling, which I find did not support that there was a large water stain as claimed by the landlord during the hearing, that I would be cancelling the 1 Month Notice due to insufficient evidence, which I will describe further below.

Analysis

Based on the above the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of July 31, 2019. The tenant disputed the 1 Month Notice on August 1, 2019, which is within the ten-day timeline provided for under section 47 of the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord alleges the three causes noted above; however, I find the use of an air conditions is not illegal, and that a puddle of water without photographic evidence, can not justify extraordinary damage. Therefore, I am left with the final cause listed by the landlord, which is the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. For the remaining cause, I note the landlord has only two blurry, black and white faxed photos, which I find does not support the existence of a large water leak from above as claimed by the landlord.

As the landlord has the onus of proof to prove that the 1 Month Notice is valid, I find that the landlord has provided insufficient evidence to prove that the 1 Month Notice is valid. Therefore, I cancel the 1 Month Notice dated July 30, 2019, as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

As the tenant's application was successful, I grant the tenant the recovery of the \$100.00 filing fee. **I authorize** the tenant a one-time rent reduction for November 2019 in the amount of **\$100.00**, in full satisfaction of the recovery of the cost of the filing fee. This is pursuant to sections 67 and 72 of the *Act*.

Conclusion

The tenant's application is successful. The 1 Month Notice issued by the landlord dated July 30, 2019, is cancelled. The tenancy shall continue until ended in accordance with the *Act*.

The tenant's rent for November 2019 has been reduced on a one-time basis by \$100.00 in full satisfaction of the tenant's recovery of the cost of the filing fee. This is pursuant to sections 67 and 72 of the *Act*.

This decision will be emailed to the tenant and sent by regular mail to the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 7, 2019

Residential Tenancy Branch