



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

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;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord's spouse in person with the notice of hearing package. The tenants stated that the landlord was not served with their submitted documentary evidence. The tenants clarified that their evidence was uploaded to the Residential Tenancy Branch and it was assumed that the landlord would be served in this manner. Both parties were advised that the Residential Tenancy Branch does not serve evidence on behalf of one party over that other. The landlord stated that she served her submitted documentary evidence via email on August 20, 2019. The tenant disputed that no such email of evidence was received. The landlord is unable to provide any supporting evidence of service. Neither party raised any other service issues.

I accept the evidence of both parties and find that both parties have been sufficiently served and deemed served as per section 90 of the Act. On the tenants' documentary evidence submission, I find that the tenants have failed to serve the landlord relying on the Residential Tenancy Branch electronic upload when this is not service to the landlord. I also find that the landlord has failed to properly serve the tenants with her submitted documentary evidence via email on a balance of probabilities. The landlord

was unable to provide any supporting evidence of service via email. The documentary evidence of both parties is excluded from consideration in this decision.

Section 47 says a landlord may end a tenancy by giving notice to end the tenancy for a number of reasons. In the case before me neither party has supplied a copy of the One Month Notice to End Tenancy for Cause. In this case, both parties failed to provide a copy of the 1 month notice in dispute. I spent a large portion of the hearing explaining the crucial and vital nature of this document to both parties. The Notice is not a trivial piece of information. It is the foundation that a landlord relies on to assist in their application to end a tenancy when there is cause. The tenant is entitled to have full answer and defence of any allegation made against them as is required under the Natural Laws of Justice. In this case, both parties verbally confirmed the contents of the 1 month notice. On this basis, the hearing continued.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed in their direct testimony that on August 2, 2019, the landlord served the tenant with the 1 Month Notice dated August 2, 2019 in person. The 1 Month Notice sets out an effective end of tenancy date of October 2, 2019 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant has caused extraordinary damage to the unit.

No details were provided on the notice.

The landlord claims that the tenants have been repeatedly late paying rent. The landlord stated the tenants have been late paying rent on at least 6 occasions, giving an example that the tenants paid rent on December 12, 2018 for December 2018 rent.

The tenants dispute these claims that he is not aware of any late rent payments.

The landlord also claims that the tenant has caused extraordinary damage noting that the pipes were clogged with toys and that a new water pump had to be purchased to replace the old one. The landlord was unable to provide any specific details of what actual extraordinary damage was caused by the tenants. The landlord also noted that in 10-12 walls there are holes that need repairs and new paint. This claim was also disputed by the tenants stating that there were no holes.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed evidence of both parties that the landlord served the tenants with the 1 month notice dated August 2, 2019. However, the landlord was unable to provide any supporting evidence in regard to the tenants having been repeatedly late paying rent. I also note that the landlord's claim of extraordinary damage was unclear and conflicting. The landlord stated that a water pump was replaced, but failed to provide any details of what if any connection there was with the tenants. I also note that the landlord has provided details of holes in at least 10-12 walls that need to be repaired and painted. This claim was also disputed by the tenants. The landlord was unable to provide any supporting evidence of extra ordinary damage. I find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlord without any supporting evidence to the contrary. The 1 month notice dated August 2, 2019 is set aside and cancelled. The tenancy shall continue.

The tenants having been successful are also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold one-time \$100.00 from the next months rent upon receipt of this decision.

Conclusion

The tenants' application is granted.

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: October 15, 2019

Residential Tenancy Branch