



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JOGA DEVELOPMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the hearing and was affirmed to be truthful in his testimony. Legal counsel for the Landlord (“Counsel”) was also present and confirmed they had authorization to speak on behalf of the Landlord.

Counsel confirmed that the Landlord received the Notice of Dispute Resolution Proceeding package. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service during the hearing.

The parties were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement that was submitted into evidence. The tenancy began on December 1, 2015. Rent in the amount of \$1,800.00 is due on the first day of each month. The Tenant paid a security deposit of \$850.00 at the start of the tenancy.

Counsel stated that the Tenant was served in person with the One Month Notice on September 2, 2019. The Tenant confirmed receipt of the One Month Notice on this date.

Both parties submitted a copy of the One Month Notice into evidence. The copy submitted by the Tenant is difficult to read and appears as though the first page is not filled out. However, the Tenant confirmed that the information was included on the first page and therefore it is likely that the quality of the copy was poor. The copy submitted by the Landlord states the following as the reason for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

Although there are three boxes listed below this, none of them are checked off. No further details were provided on the One Month Notice. Counsel submitted that the Landlord was likely assuming that by checking the above reason that all of the three sub-reasons under this checkbox would apply.

Counsel made the following submissions regarding the reasons for the One Month Notice: The Landlord received an unsolicited email from the police regarding police attendance at the property. A copy of this email was submitted into evidence dated August 30, 2019 in which 7 incidents are outlined that occurred at the residential property from February 2018 to July 2019. The incidents include stolen vehicles found on the property, drug paraphernalia on the property, stolen property found, and people present at the property being intoxicated from drug use.

Counsel submitted that this activity causes risk to the property and referenced Section 47(1)(e)(i) of the *Act* regarding illegal activity that is likely to cause damage to the landlord's property.

Counsel also noted that although not checked off on the One Month Notice, the incidents that occurred are also putting the Landlord's property at significant risk pursuant to Section 47(1)(d)(iii) of the *Act*.

Counsel submitted that it is not relevant whether the activity was conducted directly by the Tenant or by another occupant of the home or a guest of the Tenant. Counsel also noted that there has been a significant number of issues that have occurred and that the occupants of the rental unit cannot be served a notice to end tenancy, instead that the responsibility falls to the Tenant who signed the tenancy agreement.

The Tenant stated that he rents the home under the tenancy agreement and then rents out areas of the rental unit to other occupants. He stated that the issues mentioned had nothing to do with him and noted that there are no damages to the home. He stated that due to the other people residing in the rental unit, he is not always aware of who is at the unit and who may be present when he is not home.

The Tenant agreed that two of the incidents occurred with someone that was invited to be in the rental unit, but the remainder of the incidents mentioned he was not aware of or did not know who was present on the residential property.

Settlement was discussed, but the parties did not reach an agreement.

Analysis

As stated in Section 47(4) of the *Act*, a tenant has 10 days to file a dispute after receipt of a One Month Notice. As the Tenant received the One Month Notice in person on September 2, 2019 and filed the Application for Dispute Resolution on September 6, 2019, I find that he applied within the time allowable under the *Act*. Therefore, the issue before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities that the reasons for the notice are valid.

I also note that if a tenant's application to cancel a notice to end tenancy is dismissed, consideration must be given to whether the landlord is entitled to an Order of Possession pursuant to Section 55 of the *Act*.

However, Section 52 of the *Act* outlines the following regarding the form and content requirements of a notice to end tenancy:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

As stated in Section 52(d), a notice to end tenancy must state the reason for ending the tenancy. Upon review of the One Month Notice I find that the Landlord checked off that illegal activity is occurring but did not check any further boxes under that reason to indicate the concerns that are resulting from illegal activity.

As the Landlord also did not fill in the 'details of cause' on the One Month Notice, I find that the reasons for the One Month Notice are not clear. A tenant who receives a One Month Notice should be able to read the notice and have an understanding of why the notice was served and what they are disputing if they choose to do so. In the absence of details on the One Month Notice or sufficient evidence to establish that additional details were served along with the One Month Notice, I do not find the reasons for the notice to be clear.

Although Counsel indicated that the Landlord likely assumed that by checking the first box regarding illegal activity that the three reasons beneath this were applicable, I note that the additional reasons each have their own check box which would imply that one to three of the additional boxes need to be checked.

Therefore, I do not find it necessary to make a finding on the testimony of the parties regarding the reasons for the One Month Notice. Instead, I find that the One Month Notice is not valid as I find that it does not comply with the requirements of Section 52 of

the *Act*. Therefore, as the notice is not valid, it is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act* I award the Tenant the recovery of the filing fee in the amount of \$100.00. The Tenant may deduct \$100.00 from the next monthly rent payment as satisfaction of this amount.

Conclusion

The One Month Notice dated September 2, 2019 does not comply with Section 52 of the *Act* and is therefore cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant is awarded the recovery of the filing fee paid for the application in the amount of \$100.00. The Tenant may deduct \$100.00 from the next monthly rent payment as satisfaction of this amount.

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: November 22, 2019

Residential Tenancy Branch