



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 from the tenant to the *Residential Tenancy Act* ("the Act") for orders as follows:

- Cancellation of a 1 Month Notice for Cause pursuant to section 47 of the *Act*;
- A monetary award pursuant to section 67 of the *Act*; and
- A return of the filing fee pursuant to section 72 of the *Act*

The tenant, his advocate J.V-B. and the landlord's agent, M.M. ("landlord") attended the hearing.

The tenant acknowledged receipt of the landlord's 1 Month Notice for Cause, dated October 4, 2019. The tenant explained he served application for dispute and evidentiary package in person on October 6, 2019 and October 18, 2019. The tenant said the evidentiary package was given to the owner of the property on October 18, 2019 when she came to attend the property for an inspection with the City. The landlord's agent disputed having received this package. I find the tenant's version of events to be detailed and credible. The landlord's agent was unprepared for the hearing and unable to provide basic information related to the tenancy. I therefore find it reasonable to conclude that the evidentiary package was delivered to the property as described by the tenant and deem the landlord served with the package on the same date as its personal service.

The landlord acknowledged failing to serve the tenant with his evidentiary package as required by section 88 and 89 of the *Act*. Pursuant to Rule of Procedure 3.17, I decline to consider the landlord's evidence.

Issue(s) to be Decided

Should the 1 Month notice be cancelled?

Can the tenant recover the filing fee? Is the tenant entitled to a monetary award?

Background and Evidence

A copy of the tenancy agreement revealed this tenancy began on April 1, 2018. Rent is \$650.00 per month and a security deposit of \$325.00 paid at the outset of the tenancy continues to be held by the landlord.

On October 5, 2019 the landlord posted a 1 Month Notice for Cause citing, "Rental Unit/Site must be vacated to comply with a government order." The landlord argued that the City had issued a notice directing them to remove the tenant from the property due to a variety of by-law infractions. The tenant's advocate acknowledged receiving a copy of these letters dated August 28, 2019 and September 17, 2019.

These letters were provided in the tenant's evidentiary package. They indicated, "An inspection of 629* & 629* B Street conducted on 2019 August 27 revealed that the property is operating a Boarding, Lodging or Rooming House as defined in the Zoning Bylaw....In order to bring the property in compliance the Boarding, Lodging or Rooming House must cease on or before 2019 November 01 when a re-inspection will be conducted." While the letter of September 17, 2019 detailed "that staff inspected the property on September 10, 2019 in response to a report of unauthorized suites and construction."

The tenant's advocate argued that the letter made no direction to the landlord to remove the tenant from the suite. The tenant's advocate argued the landlord had ulterior motives for issuing the notice due to a "renoviction". All parties in attendance at the hearing confirmed that a language school had operated out of the home. The landlord framed this as a private tutor who attended the home for "two hours in the afternoon" while the tenant and his advocate provided evidence that this school took over large portions of the living room several days per week. The tenant's advocate explained the notice from the City was due to issues and permits associated with the language school, and the nature of the house, while the landlord maintained that the notice applied to the entire premises and required vacant possession.

In addition to the application to cancel the Notice to End Tenancy, the tenant has applied for a monetary award of \$9,660.00. The tenant explained he sought a monetary award due to a breach of quiet enjoyment, for aggravated damages related to his "renoviction" and for nominal damages. Specifically, the tenant cited damages due to a lack of general property maintenance, unreliable wifi and the lack of laundry facilities.

The tenant provided a copy of his tenancy agreement which showed wifi and laundry were to be included with his rent.

As noted previously, all parties in attendance at the hearing confirmed that a language school operated out of the home. The tenant said the operation of the school prevented him from accessing the living room and thus denied him quiet enjoyment of the rental unit. The landlord disputed the tenant's characterization of the language school, framing the school as private tutoring which took place only for only two hours per day.

Analysis

I will begin by considering the tenant's application to cancel the 1 Month Notice and then turn my analysis to the application for a monetary award.

Residential Tenancy Branch Rule of Procedure 6.6 states, "The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy."

The landlord has presented very limited information in support of their Notice to End Tenancy. I note that significant language barriers were present during the hearing and the landlord's agent at times had difficulty explaining their position as it related to the Notice to End Tenancy, however, I found the prejudice the tenant would have experienced in facing an unknown living situation outweighed any benefit which would have been stemmed from an adjournment of the proceedings. The landlord initiated the process which triggered the hearing through the issuance of the Notice to End Tenancy. The landlord should have therefore taken adequate steps to prepare for the hearing. The landlord's limited testimony, coupled with their failure to serve evidence in support of the Notice provided nothing to negate the tenant's position that the Notice should be set aside.

The letters issued to the landlord from the City to indicate changes need to be made to the premises. The letter of August 28, 2019 does not state the home cannot be used to house a rental unit, simply that it cannot be used to allow "Boarding, Lodging or Rooming". The letter of September 17, 2019 goes on to say;

The following work must be done to bring the property into compliance with City Bylaws:

- Remove (decommission) the unauthorized cooking facilities, ranges and hood fans in the basement of the two family dwelling.
- Remove all unauthorized construction in the two family dwelling. This includes but is not limited to all basement finishing, main floor demising walls, carport and deck addition and laundry room constructed in carport

Basement finishing may be possible subject to a Building Permit application demonstrating compliance with the City bylaws and the Building Code. We recommend that you engage a consultant/designer familiar with the City's permitting requirements to determine a viable option

- Engage a licensed plumbing contractor to obtain permits and inspections required...

It therefore appears that while the By-Law prohibits "Boarding, Lodging or Rooming" it also contemplate a variety of finishing options. Significantly, nothing presented in evidence indicates a tenancy cannot be approved during the process. For these reasons, I find the city By-Laws do not require termination of the tenancy, just structural changes and permit for applications. I therefore find the tenant is successful in cancelling the 1 Month Notice to End Tenancy dated October 4, 2019. This tenancy shall continue until it is ended in accordance with the *Act*.

The second portion of the tenant's application concerns a monetary award of \$9,660.00. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove his entitlement to a claim for a monetary award.

After reviewing the tenant's evidence and having considered his testimony, I decline to award the tenant any relief sought for aggravated damages. I find the landlord has been unsuccessful in their application related to an alleged renoviction and that therefore no loss has been suffered.

I do, however, find that an award of nominal damages to be more appropriate. As is noted in Policy Guideline #16, "Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right." I find the tenant has sufficiently demonstrated that he was denied access and an ability to enjoy the entirety of the rental

unit as afforded to him by the tenancy agreement. Furthermore, I find the landlord has failed to provide wifi and laundry as indicated in the tenancy agreement.

Based on a review of the evidence and the testimony from the tenant, I accept the tenant's arguments that they were denied access to 40% of the rental unit for long periods of time. I am particularly influenced by the advertisements the tenant filed showing the unit to be used as a language school. For these reasons, I allow the tenant to recover 40% of his rent, or \$650 over a six-month period as requested.

As the tenant was successful in his application, he may recover the \$100.00 filing fee from the landlord.

Conclusion

The Notice to End Tenancy dated October 5, 2019 is dismissed and is of no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

I issue a Monetary Order of \$1,960.00 in favour of the tenant as follows:

Item	Amount
Loss of Quiet Enjoyment (40% of 650 = 260) 260 x 6	\$1,560.00
Nominal Damages as requested	300.00
Recovery of Filing Fee	100.00
Total =	\$1,960.00

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 27, 2019

Residential Tenancy Branch