



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT MT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- more time to make an application to cancel the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 66; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the landlord's One Month Notice pursuant to section 46?

Is the tenant entitled to more time to make an application to cancel the landlord's One Month Notice pursuant to section 66?

Is the landlord entitled to an order of possession pursuant to section 55?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlord testified that he posted the One Month Notice on the tenant's door on September 26, 2019. The tenant acknowledged receiving the notice.

The One Month Notice stated the following grounds for ending the tenancy:

- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and,
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenant breached the tenancy agreement by incurring multiple strata fines without reimbursing the landlord. Specifically, the landlord testified that the tenant incurred the following strata fines:

- Strata fine of \$200.00 on May 29, 2019 for damage to the common property;
- Strata fine of \$200.00 on May 29, 2019 for unauthorized move;
- Strata fine of \$200.00 on August 1, 2019 for improper disposal;
- Strata fine of \$200.00 on October 8, 2019 A for improper disposal;
- Strata fine of \$200.00 on October 8, 2019 A for parking violation;
- Strata fine of \$200.00 on October 8, 2019 A for improper disposal; and,
- Strata fine of \$200.00 on October 8, 2019 A for parking violation;

The landlord provided copies of the strata fines.

The landlord testified that the payment of strata fines was a material term of the tenancy agreement. Specifically, the landlord testified that this term was the following:

7. CHARGES AND FINES: The Tenant is responsible for paying all charges and fines imposed by any authorities if incurred by, but not limited to, the Tenants, their guests, or pets. The Tenant agrees to chargebacks deducted from their security deposit if any such charges and fines have not been paid by the end of the tenancy.

The landlord provided copies of multiple emails wherein they advised the tenant of his right to dispute strata fines and advising the tenant that he would be responsible for the payment of strata fines. The landlord testified that the tenant did not dispute the strata fines or pay the strata fines so the landlord paid the \$1,400.00 in strata fines.

The tenant denied responsibility for the strata fines. The tenant testified that the strata fines were wrongfully assessed against him. The tenant testified that he did not dispute the strata fines because they were false allegations.

The landlord also testified that the tenant stored excessive boxes in the rental unit such that it was difficult to walk around the rental unit. The landlord testified that this constituted a fire hazard. The tenant testified that he did store excessive items in the rental unit.

The tenant also testified that the landlord accepted the November 2019 rent payment which reinstated the tenancy. The landlord testified that the November 2019 payment was accepted for use and occupancy only and the payment receipt stated that. Neither party presented the November 2019 payment receipt.

Analysis

The tenant may dispute a One Month Notice pursuant to section 47 of the *Act*. Pursuant to *Rules* 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

Residential Tenancy Policy Guideline No. 8 states the following regarding ending a tenancy for breach of a material term:

To end a tenancy agreement for breach of a material term the party alleging a breach - whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the
- deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a

dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find that the landlord has not provided sufficient evidence that they have provided the tenant with a writing with the requirements of Residential Tenancy Policy Guideline No. 8. The emails sent by the landlord advised the tenant that he had a right to dispute to the strata fines and that he would be responsible for the fines. However, the letters provided by the landlord did not state that the landlord believed that this the problem was a breach of a material term of the tenancy agreement. Further, the emails provided did not provide a deadline for the matter to be resolved or advise the tenant that the landlord would end the tenancy if it was not resolved.

Accordingly, I find that the landlord has not provided sufficient evidence to establish that they provided the required writing required by Residential Tenancy Policy Guideline No. 8 and section 47 of the *Act*. As such, I find that the landlord has not establish good cause to end this tenancy for breach of a material term.

I also find that the landlord has failed to provide sufficient evidence to establish that the tenancy should be ended based on the allegation that the tenant has stored excessive boxes in the rental unit. The landlord has testified that there was excessive storing of boxes. However, the tenant has denied this allegation. In that absence of any corroboration of the landlord's testify by photographic evidence, I find that tenant's denial to be equally likely as the landlord's allegations. Accordingly, I find that the landlord has failed to provide sufficient evidence to establish that cause exists to end this tenancy on the balance of probabilities.

For the forgoing reasons, grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

Since the tenant has prevailed in this matter, the tenant's application for reimbursement of the filing fee is granted pursuant to section 72. The tenant may deduct \$100.00 from **ONE** future rent payment to recover the filing fee.

Conclusion

I grant the tenant's application to cancel the One Month Notice.

The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

The tenant's application for reimbursement of the filing fee is granted pursuant to section 72. The tenant may deduct \$100.00 from **ONE** future rent payment to recover the filing fee.

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 08, 2019

Residential Tenancy Branch