



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPC MNDL FFL
For the tenants: CNC MNDCT LRE

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by the landlord and the tenant seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for an order of possession for cause, for a monetary order for damage to the unit, site or property, and to recover the cost of the filing fee. The tenant applied to cancel the 1 Month Notices to End Tenancy for Cause dated October 19, 2019 (1 Month Notice), a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and for an order to suspend or set limits on the landlord's right to enter the unit, site or property.

The tenant, an agent for the landlord BM (agent), landlord RS (landlord), and the spouse of the landlord SS (spouse) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties confirmed that they received evidence packages from each other and that they had the opportunity to review the evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*. Regarding late evidence; however, the parties were advised that I would be excluded all documentary evidence that was not served within the timelines set out in the Rules. Therefore, no late evidence has been considered as I find that doing so would prejudice the party who received the late evidence.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance both parties indicated several matters of dispute on their respective applications, the most urgent of which is the application to set aside the 1 Month Notice for the tenant, and for the landlord, the application for an order of possession based on the 1 Month Notice. I find that not all the claims on the respective applications are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 1 Month Notice and the landlord's application for an order of possession based on cause and the filing fee at this proceeding. The balance of the applications is dismissed with leave to reapply. I note the tenant's filing fee was waived so I will not be dealing with the filing fee for the tenant.

In addition to the above, both parties confirmed their email addresses. Both parties were also advised that the decision will be emailed to the parties.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If no, is the landlord entitled to an order of possession?
- Is the landlord entitled to the recover of the cost of the filing fee under the Act?

Background and Evidence

A fixed-term tenancy began on February 15, 2019 and reverted to a month to month tenancy after August 15, 2019. Monthly rent in the amount of \$1,500.00 is due on the first day of each month. A security deposit of \$750.00 was paid by the tenant at the start of the tenancy.

The tenant confirmed receiving the 1 Month Notice dated October 19, 2019 on October 19, 2019, with an effective vacancy date of November 30, 2019. The tenant disputed the 1 Month Notice on October 24, 2019 which is within the permitted 10-day timeline under section 47 of the *Act*. The landlord listed the following reason on the 1 Month Notice:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord also writes in the Details of Dispute section of the 1 Month Notice the following:

THE TENANT HAS WITHELD PART PAYMENT OF \$30 FOR INTERNET, AND HAS CONTINUALLY HARRASED THE OWNER ABOUT NOISE.

[Reproduced as written]

At the outset of the hearing, the portion of the 1 Month Notice related to failing to pay the internet amount was dismissed as the parties were advised that I do not find that relevant to the cause listed on the 1 Month Notice.

Regarding the portion of the 1 Month Notice related to the alleged harassment by the tenant to the landlord, the agent presented dates after the 1 Month Notice was issued. As a result, the agent was redirected to present any and all evidence related to why the 1 Month Notice was served on October 19, 2019. The agent was not prepared and was unable to provide documents related to a specific date that supports why the 1 Month Notice was issued. As a result, the parties were advised during the hearing that the landlord did not meet the burden of proof and the 1 Month Notice was dismissed due to insufficient evidence from the landlord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As indicated above, I find the agent was unprepared and unable to direct my attention to a specific date or documentary evidence that resulted in the 1 Month Notice being issued October 19, 2019. Therefore, I find that the landlord has provided insufficient evidence to support the only reason listed on the 1 Month Notice.

As the landlord has failed to prove that the 1 Month Notice was valid, **I cancel** the 1 Month Notice dated October 19, 2019.

I ORDER the tenancy to continue until ended in accordance with the Act. This order is made pursuant to section 62(3) of the Act.

As the landlord's application failed, I do not grant the landlord the recovery of their filing fee.

The tenant's application is successful.

Conclusion

The 1 Month Notice is cancelled.

The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to both parties.

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: December 16, 2019

Residential Tenancy Branch