



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDCT OLC FFT

Introduction

This hearing that dealt an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel the One Month Notice to End Tenancy for Cause dated October 30, 2019 (1 Month Notice), for a monetary claim of \$3,762.72 related to utilities, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and two agents for the landlord GS (landlord) attended the hearing and were affirmed. The parties confirmed that they had exchanged their documentary evidence and were given the opportunity to ask questions. Neither party indicated that they had witnessed to present at the start of the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Regarding late documentary evidence, all evidence submitted after the deadline set out in the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) I have not considered as I find it would be prejudicial to the other party to consider late evidence.

Preliminary and Procedural Matters

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice and the tenant's application to recover the cost of the filing

fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

In addition, the parties confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to both parties. The parties were also advised that any applicable orders would be emailed to the appropriate party for service on the other party.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the 1 Month Notice?
2. If not, is the landlord entitled to an Order of Possession?
3. Is the tenant entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began in 2011. Neither party submitted a copy of the 1 Month Notice; however, the parties confirmed that the 1 Month Notice was dated October 30, 2019 and listed two causes. The parties also agreed that the effective vacancy date was November 30, 2019. The agents confirmed that the tenant has paid money for use and occupancy for the month of December 2019.

The two causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The parties confirmed that the "Details of Cause" on the 1 Month Notice referred to a one-page letter explaining the reasons why the 1 Month Notice was issued (letter). The parties agreed that the letter states in part that the tenant's boyfriend (boyfriend) was designated to allow entry to the agents when the tenant was not present and that in the midst of the agents arranging to repair a glass sliding door, the boyfriend became aggressive and threatening to the agents. Specifically, agent IS (agent) stated that they were threatened by the boyfriend who was yelling and screaming at the agent and

stated that the agent could have all his little Italian friends there and that the boyfriend would show him what a real man can do. Furthermore, the parties agreed that the letter included a portion where the boyfriend indicated that he would find the agent and would finish the conversation at a later date, which the agent stated he found threatening and tried to walk away from; however, the boyfriend continued to engage the agent.

The tenant referred to a letter from BF who claims he was not a witness, which I afford no weight as the letter indicates BF was not a witness. The tenant also referred to a letter from neighbour XTG. I afford little weight to the letter as XTG was not available to provide direct testimony or be cross-examined during the hearing.

Agent IS provided direct testimony of the event which led to the issuing of the 1 Month Notice. The agent stated that he was concerned for his safety and that the boyfriend was loud, threatening and intimidating and that the boyfriend is also a large male. The landlord submitted in evidence a supporting letter from SD who was a tradesperson working on site and who writes that they witnessed the threatening behaviour of the boyfriend, which supports the testimony of the agent.

Analysis

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

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. It is worth noting that the tenant did not have their boyfriend at the hearing to provide direct testimony, nor did the tenant provide a statement in evidence from the boyfriend and only when my decision to dismiss the tenant's application was rendered during the hearing, did the tenant stated that she could call her boyfriend as a witness, which I find to be too late in the dispute resolution process as my decision had already been rendered.

I find the evidence presented by the tenant to be of little weight as one letter confirmed they were not a witness, and the second letter was from a person who could not be cross-examined during the hearing and that the letter was vague. I find the testimony from the agent to be compelling as it was consistent and supported by the letter from a contractor and was not opposed by the boyfriend during the hearing.

I find there is no room for intimidation or threatening behaviour in any tenancy, and as a result, I find the landlord has provided sufficient evidence to support that the 1 Month

Notice is valid. I also find the tenant is responsible for the actions and behaviour of her boyfriend, which has led to the eviction of the tenant. Therefore, I dismiss the tenant's application.

Based on the testimony of the parties, I find the 1 Month Notice complies with section 52 of the Act and as money was paid for use and occupancy for December 2019, and pursuant to section 55 of the Act, I grant the landlord an order of possession effective **December 31, 2019 at 1:00 p.m.** I find the tenancy ended on November 30, 2019 and that the tenant has been overholding the rental unit since that date.

As the tenant's application has been dismissed without leave to reapply, I do not grant the filing fee.

Conclusion

The tenant's application is dismissed without leave to reapply, with the exception of the monetary claim portion severed, which is described above and which the tenant has leave to reapply under the Act.

The 1 Month Notice is valid and the tenancy ended on November 30, 2019.

The landlord is granted an order of possession effective December 31, 2019 at 1:00 p.m. which must be served on the tenant. Should the landlord require enforcement of the order of possession, the landlord may apply in the Supreme Court.

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: December 16, 2019

Residential Tenancy Branch