



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 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 (One Month Notice) pursuant to section 47 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's notice of dispute resolution proceeding package and the tenant's evidence. The tenant confirmed receipt of the landlord's evidence. Based on the undisputed testimonies of the parties, I find that both parties were sufficiently served for the purposes of this hearing in accordance with the *Act*.

Preliminary Issue - Procedural Matters

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

Is the tenant entitled to recover the cost of the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony provided in accordance with the *Act* and the Rules of Procedure, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties agreed on the following facts. This tenancy began as a fixed-term tenancy on October 1, 2010, with a scheduled end date of October 1, 2011, at which point the tenancy continued on a month-to-month basis. Current monthly rent is \$1,456.00 payable on the first day of each month. The tenant paid a security deposit of \$650.00 at the commencement of the tenancy and the landlord continues to hold the deposit.

The landlord served the tenant with a One Month Notice dated October 25, 2019 by posting it on the rental unit door.

A copy of the One Month Notice, submitted into evidence, stated an effective move-out date of December 1, 2019, with the following box checked off as the reason for seeking an end to this tenancy:

Rental unit/site must be vacated to comply with a government order.

The "Details of Cause" section of the notice stated the following:

*2nd order has been received by City of [name of municipality withheld].
Main floor and top floor are unauthorized units. See order attached.*

The landlord also included the “Legal Notice” letter from the municipality attached to the One Month Notice.

The tenant confirmed receipt of the One Month Notice on October 26, 2019. On November 1, 2019, the tenant filed an Application for Dispute Resolution to cancel the notice.

The landlord claimed that the municipal government had ordered her to decommission the unauthorized rental units on the property and that in order to accommodate the work it would require the tenant to vacate his rental unit.

The landlord submitted the “Legal Notice” letter dated July 24, 2019 and the prior written warnings from the municipality into documentary evidence. I note that on page two of the “Legal Notice” it provides the following orders to the landlord:

- 1. Cease use of the two (2) unauthorized dwelling units in the principal building and in the detached garage;*
- 2. Obtain the required permits to remove both unauthorized kitchens and cooking facilities (i.e. the ranges and the associated wiring up to the supply circuit breakers); and*
- 3. Restore the building to a one family dwelling with one (1) secondary suite and the garage to its approved use as per Development and Building Permit*

The landlord confirmed that the rental property consisted of a three-level single detached home and provided the following testimony regarding the property. The basement level of the home contains an authorized two-bedroom secondary suite which is not subject to any orders by the municipal government. The garage had been converted into an unauthorized studio rental unit and was subject to the municipal order to decommission the rental unit and return the usage of the building to a garage. The top level of the home contains an unauthorized rental unit that is required to be decommissioned by the municipal order. The main level of the home contains the tenant’s rental unit, which is the subject of this dispute.

In order to fulfill the requirements of the municipal order, the landlord testified that the top level of the home will need to be reconnected via a stairway to the main level of the

home, which will require some construction work that will affect the top and main levels of the home.

The tenant confirmed that there would need to be some construction work done to reconnect the top and main levels that will affect his rental unit, however, he submitted that the landlord's One Month Notice is not applicable for his rental unit, as it is not an "unauthorized dwelling unit" and therefore, the landlord should not have issued the One Month Notice but rather a different notice in the event that the rental unit must be vacated for construction work to be done.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant confirmed that receipt of the One Month Notice posted on the rental unit door on October 26, 2019 and submitted an application to dispute the notice on November 1, 2019. I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the One Month Notice.

In this matter, I find that there is no dispute that the landlord has received a government order that requires two unauthorized dwelling units located within the rental property to be decommissioned. However, I do not find sufficient evidence presented by the landlord that the tenant's rental unit, located on the main level of the rental home, is one of those unauthorized dwellings. Rather, from the testimony and evidence presented, I find that the unauthorized dwellings subject to the municipal order pertain the rental units in the garage and top level of the home.

Therefore, based on the testimony and evidence presented, on a balance of probabilities, I do not find that the rental unit required to be vacated to comply with a government order is the rental unit occupied by the tenant, and as such the landlord has not proven the grounds on the One Month Notice for ending this tenancy. The tenant's

application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful in this application, the tenant may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In place of a monetary award, I order that the tenant withhold \$100.00 from a future rent payment on one occasion.

Conclusion

The tenant was successful in this application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated October 25, 2019 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may deduct \$100.00 on one occasion from monthly rent in satisfaction of the recovery of 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: December 20, 2019

Residential Tenancy Branch