



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OLC, LRE, RR, FFT

Introduction

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

- cancellation of the landlords' two 1 Month Notices, dated October 29, 2019 and November 18, 2019 ("two 1 Month Notices"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order restricting the landlords' right to enter the unit, pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, "male landlord" and female landlord ("landlord"), the landlords' advocate, the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed that their advocate, who is their daughter, had permission to represent them at this hearing. The tenant confirmed that his advocate, who is his mother, had permission to represent him at this hearing. This hearing lasted approximately 64 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and amendment and the tenant's advocate confirmed receipt of the landlords' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and amendment and the tenant was duly served with the landlords' evidence package.

The tenant confirmed receipt of the landlords' two 1 Month Notices on October 29, 2019 and November 18, 2019, respectively. The landlord confirmed that the two notices were served on the above dates. The two 1 Month Notices both indicate effective move-out dates of November 30, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' two 1 Month Notices on October 29, 2019 and November 18, 2019, respectively.

Preliminary Issue – Severing a Portion of the Tenant's Application

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply.

In this application, the tenant applied to cancel two 1 Month Notices, an order to comply, an order to restrict entry into the unit, a rent reduction and a monetary order for compensation of \$3,556.50. After 64 minutes, I ended the hearing after the parties presented their submissions regarding the two 1 Month Notices, an order to comply and an order to restrict entry into the unit. There was no additional time for the parties to provide substantive submissions regarding the tenant's monetary application.

The tenant's monetary application for \$3,556.50 is dismissed with leave to reapply. The tenant is required to file a new application and pay a new filing fee if he wishes to pursue this matter further. I informed both parties about this during the hearing.

Issues to be Decided

Should the landlords' two 1 Month Notices be cancelled? If not, are the landlords entitled to an order of possession?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order restricting the landlords' right to enter the unit?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 15, 2018. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$1,178.75 is payable on the last day of each month. A security deposit of \$575.00 was paid by the tenant and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit.

Copies of the landlord's two 1 Month Notices were provided for this hearing. Both parties agreed that the two 1 Month Notices were issued for the following reasons:

- *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;*
 - *put the landlord's property at significant risk.*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The tenant seeks to cancel the landlords' two 1 Month Notices. The landlords seek an order of possession based on the two 1 Month Notices.

The landlord stated the following facts. The tenant has been smoking at the rental unit and it is affecting the health of the male landlord and other occupants in the rental building. The only person who could be smoking was the tenant. Other occupants can smell the cigarette and marijuana smoke in the hallways at the rental building. The landlords have sent text messages and letters to the tenant about the smoking, other occupants have witnessed the tenant smoking inside his rental unit, and there are non-smoking signs all over the rental building. The tenant has damaged the landlords' property by smashing the washing machine, damaging the laundry basket, stomping up and down, and having angry outbursts.

The landlords' advocate testified regarding the following facts. The tenant's mother is parking in the parking stalls of other occupants, these are not visitor parking stalls, the police have been involved, and this is a bylaw issue, not a tenancy issue.

The tenant's advocate stated the following facts. The landlords have only told the tenant twice about smoking since October 27, 2019. The landlord apologized one time, stating that she was wrong, and another occupant next door was smoking. The tenant does not smoke cigarettes or marijuana. The tenant consumes edible marijuana products. The tenant is not able to smoke according to his doctor. The tenant does not engage in any illegal activity. The tenant is not violent, did not cause any damages, and suffers from a brain injury. The landlords are campaigning to evict the tenant.

The tenant seeks an order for the landlords to comply with the *Act*. The tenant's advocate stated that the tenant was without a shower for five days. She explained that the tenant requested repairs to his toilet, but the landlords did not respond to him. The tenant seeks an order to restrict the landlords' right to enter the rental unit. The tenant's advocate said that the landlords entered the tenant's rental unit without permission, the tenant noticed that his stove light was turned off, it smelled like the male landlord's cologne, and the tenant's notebook from school went missing.

The male landlord denied entering the tenant's rental unit without permission. He stated that he sent text messages to the tenant, included in the landlords' evidence, before entering the rental unit. He maintained that he arranged a time with the tenant to inspect the toilet for repairs.

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the two 1 Month Notices on October 29, 2019 and November 18, 2019 and filed his application to dispute the first notice on November 5, 2019 and the second notice on November 27, 2019, by amendment. Accordingly, I find that the tenant's application and amendment were filed within the ten-day time limits under the *Act*. Therefore, the onus shifts to the landlords to prove the reasons on the two 1 Month Notices.

On a balance of probabilities and for the reasons stated below, I find that the landlords did not issue the two 1 Month Notices for valid reasons.

I find that the landlords failed to provide sufficient evidence that the tenant seriously jeopardized the health, safety or lawful right of the landlords or other occupants. The tenant denied smoking at the rental unit. The landlords were unsure whether the tenant was actually smoking inside the unit, as they stated in their own testimony that the “only person who could be smoking was the tenant.” The tenant raised the issue that his neighbour was “grandfathered in” to be able to smoke at the rental property and the landlords apologized for accusing him of smoking when it was actually his neighbour smoking. I find that the landlords failed to provide sufficient documentary or testimonial evidence of “serious jeopardy” with respect to the tenant’s smoking.

I find that the landlords failed to show that the tenant put the landlords’ property at significant risk. The landlords did not indicate details of the damage they alleged was caused to the washing machine and the laundry basket. They did not testify about quotes or estimates of the damage, nor that it caused “significant risk.” The landlords claimed that the tenant “stomps up and down” at the rental building but did not indicate how this caused “significant risk” or damage.

I find that the landlords failed to show that the tenant engaged in illegal activity. The landlords did not testify or provide sufficient documentary evidence that the tenant was charged with or convicted of any crimes or illegal activity. They did not provide police reports or police witness testimony to substantiate this claim.

I also find that the landlords failed to show that the tenant breached a material term of the parties’ written tenancy agreement. The landlords did not point to which section of the tenancy agreement they were referencing. I find that the landlords failed to provide sufficient evidence that smoking is a “material” term of the tenancy agreement or why or how it was material.

Accordingly, the landlords’ two 1 Month Notices, dated October 29, 2019 and November 18, 2019, are cancelled and of no force or effect. The landlords are not entitled to an order of possession. This tenancy will continue until it is ended in accordance with the *Act*.

The tenant’s application for an order for the landlords to comply with the *Act*, is dismissed without leave to reapply. The tenant did not reference any specific sections of the *Act*. The tenant indicated that the landlords failed to respond to him to complete repairs, while the landlords indicated that they did repairs. I find that the tenant failed to show any ongoing repairs are required.

The tenant's application to restrict the landlords' right to enter the rental unit is dismissed without leave to reapply. I find that the tenant failed to show that the landlords did not comply with section 29 of the *Act* by providing proper notice before entering the rental unit. The landlords confirmed that they provided notice to the tenant before entering the unit for repairs. I find that the tenant was speculating that the landlords entered his rental unit without permission or notice because he thinks he smelled cologne and he alleged that his stove light was turned off. I do not find the above to be sufficient evidence to restrict the landlords' right to enter the unit.

As the tenant was only partially successful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenant's application to cancel the landlords' two 1 Month Notices is allowed. The landlords' two 1 Month Notices, dated October 29, 2019 and November 18, 2019, are cancelled and of no force or effect.

The landlords are not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for an order for the landlords to comply, to restrict the landlords' right to enter the unit, and to recover the \$100.00 filing fee, are all dismissed without leave to reapply.

The tenant's application for a monetary order of \$3,556.50 is dismissed with leave to reapply.

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 23, 2019

Residential Tenancy Branch