



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT LRE MNDCT

Introduction

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

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant provided sworn, undisputed testimony that he had served the landlord with his application for dispute resolution hearing package ("Application") and evidence by way of registered mail on December 8, 2019. The tenant provided photos of the receipt the package, as well as the tracking information in his evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord deemed served with the Application and evidence on December 13, 2019, 5 days after mailing. The landlord did not submit any written evidence for this hearing.

The tenant confirmed receipt of the landlord's 1 Month Notice To End Tenancy for Cause ('1 Month Notice') dated November 27, 2019, with an effective date of December 31, 2019, which was posted on his door on November 30, 2019. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2017, with monthly rent currently set at \$1,120.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$550.00 for this tenancy, which the landlord still holds.

The tenant was served with a 1 Month Notice to End Tenancy dated November 27, 2019. The tenant provided a copy of the 1 Month Notice in his evidentiary materials.

The landlord provided two reasons for why they had issued the 1 Month Notice: 1) The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk and 2) The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The tenant disputes the reason for why the 1 Month Notice was issued to him. The tenant testified that the landlord has already attempted to end the tenancy at an earlier hearing, but was unsuccessful. The tenant testified that the landlord is attempting to end this tenancy in an effort to obtain higher rent. The tenant testified that since the landlord had attempted to end the tenancy at the last hearing, the tenant has been in a "state of instability", and is so fearful of being evicted that he has been too afraid to unpack his belongings. The tenant feels that this is a second attempt at ending this tenancy for the same reason.

The tenant testified that the landlord had already advertised the unit for rent, and has been showing the unit to prospective tenants without his knowledge or permission. The tenant testified that the landlord had given him notice to enter the suite, but did not inform the tenant of the true reason for the access. The tenant is applying for an order to suspend or set conditions on the landlord's right to enter the rental unit.

The tenant is also seeking \$250.00 in compensation for the loss of quiet enjoyment, and recovery of the filing fee.

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. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

In the absence of any evidence or submissions from the landlord in this hearing, I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*.

The tenant testified in the hearing that the landlord had already listed the rental unit for rent, and had shown the rental unit without the tenant's knowledge or permission.

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. The landlord's right to enter a rental unit is restricted, and the landlords must not enter unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I order that the landlord comply with section 29(1) of the *Act* as set out above.

The tenant also made a monetary claim in the amount of \$250.00 in compensation for the landlord's actions during this tenancy. Section 67 of the *Act* establishes that if damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

Residential Tenancy Branch (“RTB”) Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Although I am sympathetic towards the tenant and the stress he has experienced during this tenancy, I am not satisfied that there has been an infraction of a legal right, or that the tenant has suffered a loss due to the landlord’s actions. Accordingly, I dismiss the tenant’s application for monetary compensation without leave to reapply.

As the tenant’s application had merit, I allow the tenant to recover the filing fee for this application.

Conclusion

The tenant’s application to cancel the landlord’s 1 Month Notice is allowed. The landlord’s 1 Month Notice, dated November 27, 2019, is cancelled and is of no force or effect. This tenancy is to continue until it is ended in accordance with the *Act*.

I order that the landlord comply with section 29(1) of the *Act*.

The tenant’s application for monetary compensation is dismissed without leave to reapply.

I issue a \$100.00 Monetary Order in favour of the tenant for recovery of the filing fee. I allow the tenant to implement the above monetary award by reducing a monthly rent payment in this amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord(s) must be served with **this Order** as soon as possible.

Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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: January 30, 2020

Residential Tenancy Branch