



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFL

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the landlord's One Month Notice to End Tenancy for Cause (Notice) and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-

The tenant confirmed receiving the landlord's documentary evidence prior to the hearing when it was posted to his door; however, the tenant said he did not read the evidence as it was served within seven days of the hearing.

I informed the tenant that I would consider the landlord's evidence, as I have determined that the tenant had ample time to read the evidence, consider the evidence, and formulate a response, if he chose to do so. I have made this determination based

upon the principles of fairness. I note that the tenant did not request an adjournment of the hearing in order to provide a response.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the tenant entitled to recovery of his filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on September 15, 2018 and that monthly rent is \$1,100.00. The rental unit is the basement level of a home which is occupied by the landlord and his family in the upper level.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the Notice. The landlord said the Notice was served to the tenant by personal service on November 1, 2019, and listed an effective end of tenancy of move-out date of November 1, 2019.

The reasons stated on the Notice to end tenancy were that:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- that the tenant engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant and to jeopardize a lawful right or interest of another occupant or the landlord;
- that the tenant engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord; and
- the tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

On the Notice, there is an area on page two, labelled DETAILS OF CAUSE. There are instructions in this area to "Include any dates, times, people or other information that says who, what, where and when caused the issue". The instructions further declare that the "RTB may cancel the notice if details are not described".

In this area, the landlord wrote as to the details, the following:

“Violation of lease terms, separate sheets attached.”

The landlord submitted a copy of the Notice and the separate sheets.

In support of his Notice, the landlord submitted that the tenant’s daughter has allowed her friends to enter the rental unit through a bedroom window. The landlord submitted that he installed security cameras and the video revealed that when the tenant’s daughter skipped school or otherwise stayed home, her friends came in through the bedroom window.

The landlord submitted that these actions violated the terms of the written tenancy agreement, which was signed in September 2019. The landlord pointed out specifically that the terms at issue were in the addendum portion. The landlord submitted a copy of the tenancy agreement.

The landlord submitted that he issued the tenant a written warning, dated October 31, 2019, given to the tenant that date, and referenced incidents on October 9, 2019, and October 27, 2019. The landlord also submitted a November 1, 2019, letter which was delivered on the day the Notice was issued, November 1, 2019.

Tenant’s response-

The tenant submitted that when the landlord raised the issue of his daughter allowing her friends to come into the rental unit through the bedroom, he sent his daughter to live with his former wife. The tenant submitted that the matter has been resolved, as his daughter is living with her mother now.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Section 47 of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice for a variety of causes. In this case, the landlord alleged that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security,

safety or well-being of another occupant, that the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord, and the tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

On the basis of the undisputed evidence and the Notice, I find that the tenant was served with a Notice that did not provide sufficient details of three of the four causes of why the landlord was ending the tenancy.

The Details of Cause portion of the Notice only mentioned that the tenant had violated the lease terms, as per the attached separate sheets. Due to that being the only cause specified in the Details of Cause portion, I determined that the only cause on which I could consider was whether the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's evidence shows that he provided the tenant with a written notice/warning letter on October 31, 2019, and issued the Notice on November 1, 2019.

I find the one-day period from written warning to correct the breach to issuing the Notice did not provide the tenant a reasonable time to correct the issue.

Additionally, the landlord did not dispute that the tenant's daughter is now living with her mother.

Due to the above, as I have found the landlord did not allow the tenant a reasonable time after the written warning to correct a breach of a material term of the tenancy agreement, I find the landlord has not submitted sufficient evidence to support his Notice.

On this basis, I find that the landlord's 1 Month Notice is without merit. The tenant's application to cancel the 1 Month Notice is granted.

I order that the Notice dated and issued on November 1, 2019, be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

As I have cancelled the landlord's Notice for the above reasons, I find it was not necessary to consider whether the terms in the tenancy agreement referred to by the landlord as being breached were material terms.

For clarity and as mentioned, I did not consider the other three causes listed by the landlord as I find that the landlord's failure to provide this information in the Details of Causes section on these three causes breached the rules of procedural fairness. I find the lack of details prevented the tenant from understanding the full details of the reasons for ending the tenancy.

This decision does not reflect that the landlord did not have valid grounds to end the tenancy on those three causes, only that the Notice was deficient for the above reasons.

As the tenant was successful with his application, I award him recovery of his filing fee of \$100.00 paid for this application. The tenant is directed to deduct \$100.00 from his next, or a future month's rent payment, in satisfaction of his monetary award, informing the landlord when he is making this deduction.

Conclusion

The tenant's application seeking cancellation of the Notice is granted as I have cancelled the Notice and granted him recovery of her filing fee, pursuant to section 72 of the Act.

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 6, 2020

Residential Tenancy Branch