



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC DRI OLC FF

Introduction

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

- cancellation of a One Month Notice to End Tenancy For Cause (the "One Month Notice"), pursuant to section 47;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

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

Background and Evidence

The rental unit is a basement suite of a residential dwelling. The tenancy began May 2013. The current monthly rent is \$950.00 payable on the 1st day of each month.

The landlord served the tenant with a One Month Notice on December 8, 2019 with an effective date of January 31, 2020. The One Month Notice was issued on the following ground(s):

- the tenant or a person permitted on the residential property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

It was evident from the testimony and evidence submissions of the parties that this relationship soured after the landlord attempted to negotiate a rent increase with the tenant which was well above the allowable annual percentage under the Act.

The landlord submits that as a result, the relationship has soured to the point of being irreparable. The landlord S.F. testified that the tenant called her a "bitch" in front of her four-year-old son. The landlord submits that the tenant refused to respond to their requests for the tenant to provide availability dates for showing of the suite to a realtor. The landlord also submits the tenant's unit was not tidy when a realtor attempted to take pictures to list the house.

The tenant denies the accusations put forth by the landlord.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

First, I find that the landlord argument that the tenant referred to her as a “bitch” in front of her four-year-old son is not in itself sufficient grounds to end a tenancy of over 6 years. The tenant is not legally obligated to accept or negotiate a rent increase above the maximum allowable under the Act. The landlord’s insistence that the tenant agree to such is what caused the relationship to sour in the first place. Second, the tenant is not obligated to provide the landlord with a list of available dates for showing of the unit, so this is not a valid ground for ending the tenancy. Third, even if the tenant’s suite was not tidy for a showing, a finding which I am not making, this single incident does not constitute a significant interference or serious jeopardy of the landlord’s lawful right.

I find the landlords presented insufficient evidence to justify that they had cause to issue the One Month Notice, specifically on the grounds of significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I allow the tenant’s application to cancel the landlord’s One Month Notice, dated December 8, 2019, which is hereby cancelled and of no force or effect.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

Conclusion

The landlord’s One Month Notice, dated December 8, 2019, is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with 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: February 03, 2020

Residential Tenancy Branch