



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, CNC, RP, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on December 31, 2019, to request an order for the Landlord to comply with the *Act*, for an order for the Landlord to make regular repairs to the rental unit, to suspend or set conditions on the Landlord’s right to enter the rental unit, and to recover the filing fee for this application. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matters- Related Issues

I have reviewed the Tenant's application, and I note that the Tenant has applied to cancel a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant's request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for an order for the Landlord to make regular repairs to the rental unit, and to suspend or set conditions on the Landlord's right to enter the rental unit.

I will proceed with this hearing on the Tenant's claim to cancel the One-Month Notice, for an order for the Landlord to comply with the *Act*, and to recover the filing fee for this application.

Issues to be Decided

- Should the Notice issued on December 31, 2019, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to an order for the Landlord to comply with the *Act*?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement into documentary evidence. The tenancy agreement shows that the tenancy began on September 1, 2008, as a one-year fixed-term tenancy, that rolled into a month to month tenancy at the end of the initial fixed term. The Tenant testified that he had moved into the rental unit in August 2008. The Landlord testified that the Tenant did not move into the rental unit until mid-September 2008. Both parties agreed that the rent in the amount of \$1577.00 is to be paid by the first day of each month and there has been a \$650.00 security deposit paid for this tenancy.

Both the Landlord and the Tenant testified that the Landlord served the Notice to end tenancy to the Tenant on December 31, 2019, by personally serving it to the Tenant. The Landlord submitted a copy of the Notice into documentary evidence. The Notice indicated that the Tenancy would end on January 31, 2020. The reason checked off by the Landlord within the One Month Notice was as follows:

- *Tenant is repeatedly late paying rent.*
- *Tenant or a person permitted on the property by the Tenant has:*
 - *Put the Landlord's property at significant risk*

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Tenant's application shows that the Tenant filed to dispute the Notice on January 7, 2020, within the statutory time limit.

The Landlord testified that the Tenant has been late in paying the rent three times since July 2019 and that three 10-Day Notices to End Tenancy for Unpaid Rent and been issued to the Tenant. The Landlord also testified that the Tenant pay the rent within 2 to 3 days of receiving these 10-Day Notices to End Tenancy for Unpaid Rent.

The Tenant testified that the rent has not been paid late and that no 10-Day Notices to End Tenancy for Unpaid Rent had been issued to the Tenant.

The Landlord testified that copies of the 10-Day Notices to End Tenancy for Unpaid Rent were not submitted into documentary evidence for these proceedings.

The Landlord testified that since July 2019, the Tenant has been using several parking spots on the property to store propane tanks, wood and a vehicle that is leaking oil. The Landlord also testified these items put the property at risk as someone could break in to the parking garage and start a fire with these teams. The Landlord also testified that the tenancy does not include parking and that the Tenant had been asked several times to stop using the parking spots or to pay for the use of the parking spots. The Landlord submitted nine pictures of the parking spots and two warning letters given to the Tenant, regarding the parking spots, dated September 4, 2020, and September 20, 2020, into documentary evidence. The Landlord requested that the Notice be enforced.

The Tenant testified that he is using the parking spots but that they were included in his tenancy agreement. The Tenant also testified that the propane tanks that had been stored in the parking spots were empty and that the wood was the Landlords. The Tenant confirmed that the propane tanks and the wood have been removed from the parking spots. The Tenant requested that the Notice be cancelled.

Additionally, the Tenants testified that the Landlord had looked inside the closet, in the rental unit, during a rental unit inspection. The Tenant is requesting an order for the Landlord to comply with the *Act*, by not look through the Tenant's personal belongings during rental unit inspections be issued.

The Landlord agreed that the closet had been inspected during the inspection. When asked, both the Landlord and the Tenant agreed that the closet is part of the rental unit and is the property of the Landlord.

Analysis

I acknowledge that there were many issues brought forth related to the tenancy during the hearing. Although I have reviewed all of the evidence and testimony submitted during the hearing, only the evidence and testimony relevant to the issue and my finding in this matter are described in this decision.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy on December 31, 2019. Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenant had until January 10, 2020, to file an application to dispute this Notice. I have reviewed the Tenant application for dispute resolution, and I find that the Tenant filed the application on January 7, 2020, within the statutory time limit.

The Landlord indicated two reasons on the Notice as the cause for ending the Tenant's tenancy; I will address each one individually:

1) The Tenant has repeatedly late paying rent

During the hearing, I heard contradictory testimony from both parties regarding the payment of rent.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

After careful review of the Landlord's documentary evidence, I find that the Landlord has not provided sufficient evidence to support the Landlord claim that the Tenant had paid the rent late. Therefore, I find the Landlord has failed to provide evidence sufficient to show cause to terminate the tenancy on this point of the Landlord's Notice.

2) The Tenant has put the Landlord's property at significant risk

Throughout the hearing, I heard contradictory testimony from both parties regarding the Tenant use of the parking area and the risk to the property associated with allowing this tenancy to continue. As noted above, it is the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

After careful review of the testimony and the documentary evidence before me, I find that the Landlord has not provided sufficient documentary evidence, to satisfy me, that the Tenant has created a significant risk to the Landlord's property by the use of the parking spots in the parking area.

Overall, I find that the Landlord has not proven cause sufficient to terminate the tenancy for either of the reasons given on the Notice that was issued. Therefore, I grant the Tenant's application to cancel the Notice issued on December 31, 2019, and I find the Notice is of no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

In regard to the Tenants request for an order for the Landlord to comply with the *Act*. I accept the agreed-upon testimony of the Tenant and the Landlord that the Landlord looked inside the closet during a rental unit inspection. Section 29(2) of the *Act* states the following:

Landlord's right to enter rental unit restricted

29 (2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I also accept the agreed-upon testimony of the Tenant and the Landlord that the closet is part of the rental unit, included in this tenancy. I find that the Landlord was conducting a rental unit inspection, as permitted by the *Act*, when the Landlord looked in the closet, and as the closet is part of the rental unit the Landlord was within their rights to inspect the closet.

I find that the Landlord has not breached the *Act* by inspecting the closet of the rental property. Therefore, I dismiss the Tenant's application for an order for the Landlord to comply with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in this application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is allowed to take a one-time deduction of \$100.00, from his next month's rent, to recover of the filing fee for this application.

Conclusion

The Tenant's application to cancel the Notice is granted, and I find the Notice dated December 31, 2019, to be of no effect under the *Act*. The tenancy will continue until legally ended in accordance with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00, from the next month's rent.

I dismiss the Tenant's application for an order for the Landlord to comply 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: March 11, 2020

Residential Tenancy Branch