



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **PSF, OLC, FFT, LRE, CNC, AAT**

Introduction

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

- an order that the landlord provide services or facilities agreed upon but not provided pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee from the landlord pursuant to section 72;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order allowing the tenant access to the rental unit pursuant to section 70.

The landlord did not attend this hearing which lasted approximately 35 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their notice of hearing and evidence by registered mail sent on February 7, 2020. The tenant provided a valid Canada Post tracking number as evidence of service.

At the outset of the hearing the tenant testified that they have been informed that the respondent landlord has passed away since the notice of hearing and evidence was served. The tenant is not aware of who has been appointed at the deceased's personal

representative and has received no information or documentation as to who may be acting on behalf of the deceased landlord's estate. No documentary evidence was submitted on this point.

I find that there is insufficient evidence to establish that the respondent was not served in accordance with the Act. While I accept the undisputed testimony of the tenant that the landlord has passed away since being served, I find little evidence that they were not served during their lifetime and there are no submissions before me disputing service. Furthermore, I find that no evidence was presented as to who may be acting on behalf of the estate or if anyone has been appointed at the present time. Based on the evidence I find that the landlord is deemed served with the tenant's materials on February 12, 2020 in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

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

Is the tenant entitled to any of the other relief sought?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

This periodic tenancy began in November, 2016. Monthly rent is \$700.00 payable on the first of each month. The rental unit is a structure that floats on water and is moored to a fixed structure on land or as part of the marina.

The landlord issued a 1 Month Notice dated January 30, 2020 on that date. The reason for the tenancy to end provided on the notice is 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.

The tenant filed their application to dispute the 1 Month Notice on February 6, 2020. The tenant also seeks an order to set conditions on the landlord's right to enter the rental unit as they are concerned that the landlord may prevent access to the rental unit or have the structure towed away without authorization.

The tenant testified that the portion of their application seeking that the landlord provide services or facilities was resolved prior to the hearing as the landlord reinstated their wif access.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. When a tenant files an application to dispute a 1 Month Notice, the onus shifts onto the landlord to show on a balance of probabilities that there is cause for the tenancy to end.

As no representative of the landlord attended the hearing I find there is insufficient evidence in support of the notice to end the tenancy. While there is some documentary evidence of the cause submitted in the materials, I find that in the absence of the landlord to provide testimony or present evidence they have not met the burden of proof in establishing a basis to end this tenancy for cause in accordance with the 1 Month Notice. Therefore, I allow the tenant's application to cancel the 1 Month Notice.

The tenant seeks an order preventing the landlord or representatives of the landlord's estate from entering the rental property or preventing the tenant from accessing the property. I find that there is insufficient evidence that the tenant's concerns are founded on anything more than general concern. I find little evidence that the landlord has breached the *Act*, regulations or tenancy agreement, prevented the tenant from accessing their rental unit or entered the rental property without authorization such that an Order is necessary.

I decline to issue an order but find it appropriate to confirm that pursuant to the *Ministerial Order M089* issued March 30, 2020, in accordance with the state of emergency that despite section 29 of the *Act*, **a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections.**

As the tenant was successful in their application they are entitled to recover their filing fee from the landlord. I allow the tenant to make a one-time deduction of \$100.00 from their next scheduled rent payment in satisfaction of their monetary award.

Conclusion

The 1 Month Notice of January 30, 2020 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

Both parties are reminded of the provision of *Ministerial Order M089* issued March 30, 2020 restricting a landlord's right to enter a rental unit even if written notice is given.

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: April 16, 2020

Residential Tenancy Branch