



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This matter convened by teleconference on March 23, 2020 to deal with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the filing fee.

The tenant and the landlord's agent, WW, attended the hearing and the tenant immediately requested an adjournment due to being as she was a health care professional providing services in the province for the on-going pandemic.

The landlord's agent did not object to the adjournment.

An Interim Decision was issued on March 23, 2020, in which I ordered the hearing be adjourned and reconvened on the date and time contained in the attached Notice of Adjourned Hearing. The parties were advised that the hearing would continue with or without their presence.

At the reconvened hearing, the tenant attended; however, neither the landlord's agent nor the landlord/owner attended.

At the reconvened hearing, the tenants was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary 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.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulations, or tenancy agreement?

Is the tenant entitled to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted by the tenant shows that this tenancy began on October 1, 2017, that monthly rent is \$1,400.00 and that she paid a security deposit of \$700.00 at the start of the tenancy.

The tenant submitted that the landlord served the Notice, dated January 19, 2020, to her underage daughter on January 20, 2020. The move-out date listed on the Notice was February 20, 2020. The tenant submitted her application to dispute the Notice on January 20, 2020.

The cause listed on the Notice, submitted into evidence by the tenant, alleged that a security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The tenant denied that the tenancy agreement required a pet damage deposit and when they moved in, they had a pet. Now, according to the tenant, they have another pet they are fostering, and have been for two years, with the landlord's knowledge, as she lives upstairs. The tenant submitted the landlord has never required a pet damage deposit and now the landlord's agent has been harassing her, saying that he needs to make a living. The landlord's agent, according to the tenant, wants the tenant to mail him the pet damage deposit, instead of to the landlord.

As to the tenant's request for an order requiring the landlord to comply with the Act, the tenants submitted that the original tenancy agreement required no pet damage deposit

and that she has the landlord's verbal permission to have a pet. The tenant submitted additionally that the landlord's agent served her underage daughter with the Notice.

Analysis

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

Cancellation of the Notice-

When a landlord issues a notice to end a tenancy and the tenant files an application to dispute the notice, the landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to prove the causes alleged on their Notice.

In this case, the Notice was issued pursuant to section 47 of the Act for alleged cause and I accept the tenant's undisputed evidence that she received the Notice on January 20, 2020.

As the tenant's application was filed on January 20, 2020, I find that she disputed the Notice within the timeframe required under the Act.

In the absence of the landlord or any evidence from the landlord to support the ground listed in the Notice, I find that it must be set aside.

I therefore order that the Notice dated January 19, 2020, and served on January 20, 2020, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

Order requiring the landlord to comply with the Act -

I find the tenant did not provide specific information as to which section of the Act to which her application referred.

I informed the tenant that the matter of a pet damage deposit would now be considered a moot issue, or *res judicata*, going forward in this tenancy, as I have cancelled the landlord's Notice. What this means, is the issue of the payment of a pet damage deposit has been decided upon and the landlord may not now seek to end the tenancy for this reason.

Due to the above, I dismiss this portion of the tenant's application, due to its non-specificity.

Filing fee-

I allow the tenant recovery of her filing fee of \$100.00, and direct her to deduct this amount from her next or a future month's rent payment in satisfaction of her monetary award, notifying the landlord of when this deduction is being made.

The landlord may not serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when the tenant has made this deduction of \$100.00.

Conclusion

The tenant's application is granted as I have cancelled the landlord's Notice, dated January 19, 2020.

The tenant is granted recovery of the filing fee.

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: May 12, 2020

Residential Tenancy Branch