



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC, OLC, RP, LRE, PSF, OT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 31, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a One Month Notice to End Tenancy for Cause dated March 25, 2020 ("the One Month Notice");
- an order for regular repairs;
- an order to provide services or facilities required by a tenancy agreement or law;
- an order for the landlord to comply with the Act;
- an order to restrict or suspend the Landlord's right to enter; and
- an order granting the recovery of the filing fee.

Preliminary Matters

The Tenant amended his Application on April 30, 2020 to cancel an additional One Month Notice to End Tenancy for Caused dated April 25, 2020.

The Tenant, and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of the respective application package, amendment and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the One Month Notices to End Tenancy dated March 25 and April 25, 2020.

The Tenant's request for an order for an order for regular repairs, an order to provide services or facilities required by a tenancy agreement or law, an order for the Landlord to comply with the Act, and an order to restrict or suspend the Landlord's right to enter are dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notices dated March 25 and April 25, 2020 pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notices, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

A copy of the tenancy agreement was provided which indicates that the tenancy began on January 1, 2012. The parties testified and agreed that the Tenant is currently required to pay rent in the amount of \$783.82 which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$325.00 which the Landlord continues to hold.

The Landlord stated that he served the Tenant with a One Month Notice on March 25, 2020 with an effective vacancy date of April 30, 2020 by posting it to the Tenant's door. The Tenant confirmed having received the One Month Notice on March 25, 2020. The Landlord's reason for ending the tenancy on the One Month Notice is;

"The Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health and safety or lawful right of another occupant or the Landlord"

The Landlord stated that he served the One Month Notice to the Tenant in relation to the Tenant having an untidy yard. The Landlord stated that he spoke to the Tenant about this on February 26, 2020 and had requested that the Tenant tidy his yard on or before March 7, 2020. The Landlord stated that he attended the rental property on March 9, 2020 and found the yard to still be untidy. The Landlord stated that he resides next door to the rental property and that he is concerned as the Tenant's untidy yard may impact the Landlord's health. As such, the Landlord is seeking to end the tenancy.

In response, the Tenant stated that he had asked the Landlord to conduct some repairs to the rental property on February 25, 2020 and that on February 26, 2020 the Tenant received the Landlord's request to tidy the yard. The Tenant stated that he complied with the Landlord's request, however, he stated that the Landlord was vague with his direction which lacked specifics.

The Landlord stated that he served the Tenant with a One Month Notice on April 25, 2020 with an effective vacancy date of May 31, 2020 by posting it to the Tenant's door. The Tenant confirmed having received the One Month Notice on April 25, 2020. The Landlord's reason for ending the tenancy on the One Month Notice is;

"The Tenant has damaged the Landlord's property"

The Landlord stated that the Tenant notified him that his washing machine was not working. The Landlord stated that the Tenant proceeded to drop the washing machine off in the Landlord's driveway. The Landlord stated that the washing machine was broken beyond repair. As such, the Landlord is seeking to end the tenancy.

In response, the Tenant stated that he had spoken to the Landlord about the broken washing machine, however, the Landlord did not take any steps to have the washing machine repaired. As such, the Tenant stated that he purchased a newer washing

machine and returned the broken washing machine the Landlord who resides next to the rental property.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with two One Month Notices to End Tenancy for Cause. The first One Month Notice was served on March 25, 2020 with an effective vacancy date of April 30, 2020, by posting it to the Tenant's door. The Tenant confirmed having received the notice on the same date. The Landlord also served the Tenant with a One Month Notice on April 25, 2020 with an effective vacancy date of May 31, 2020 by posting it to the Tenant's door. The Tenant confirmed receipt on the same date. I find the both One Month Notices were sufficiently served pursuant to Section 88 of the Act.

In relation to the One Month Notice dated March 25, 2020, I accept that the Landlord requested that the Tenant tidy the yard, however, the Landlord provided insufficient evidence to demonstrate that the condition of the Tenant's yard has seriously jeopardized the health and safety or lawful right of another occupant or the Landlord. As such, I cancel the One Month Notice dated March 25, 2020.

In relation to the One Month Notice date April 25, 2020, I find that the Landlord provided no evidence to demonstrate that the Tenant has damaged the Landlord's property. I accept that the Tenant stated that he notified the Landlord that the washing machine was broken and that the Tenant replaced the washing machine on his own. In light of the above, I cancel the One Month Notice dated April 25, 2020 and order that the tenancy continue until ended in accordance with the Act.

As the Tenant was successful in his Application, I find that he is entitled to the recovery of the filing fee. I find that the Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The One Month Notices issued by the Landlord dated March 25 and April 25, 2020 are cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

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 25, 2020

Residential Tenancy Branch