



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, PSF, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement;
- an order requiring the landlord to make regular repairs to the rental unit;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act; and
- recovery of the filing fee.

The tenants, their legal advocate and the landlord's agent attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The tenants' advocate said that they served the landlord with their evidence consisting of approximately 66 pages, with index, by registered mail. The landlord's agent said the

landlord received 4 pages from the tenants. The tenants' advocate confirmed all pages were in the package.

As the landlord was not present to confirm or deny receiving the entire evidence package of the tenants, I find the tenant's advocate provided compelling and undisputed testimony that the landlord was served the entire evidence package of the tenants. I therefore find on a balance of probabilities it was sufficiently served to the landlord and have included the evidence for consideration. I note the tenants also submitted copies of the registered mail receipt supporting the service of documents.

In addition, the landlord's agent said that the landlord served each tenant with her evidence on July 27, 2020, by attaching the documents to the tenants' door. The agent also submitted that the landlord sent her evidence to the Residential Tenancy Branch (RTB) by registered mail on July 27, 2020. As of the date of the hearing, the evidence had not been received.

I informed the parties I would search the Canada Post website to trace the tracking history, once the landlord's agent was able to provide the tracking number. A search showed that the registered mail was accepted on July 28 and delivery was still pending.

I accept the undisputed testimony of the tenants that they did not receive the landlord's evidence and therefore, I have excluded it from consideration. The landlord's agent did not request an adjournment of the hearing.

Additionally, Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the application, the most urgent of which is the application to cancel the Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to cancel the Notice and the tenants' application to recover the cost of the filing fee at this proceeding. The balance of the tenants' application is dismissed, with leave to re-apply.

Issue(s) to be Decided

Has the landlord met the burden of proof to uphold the Notice?

Are the tenants entitled to recovery of their filing fee paid for this application?

Background and Evidence

The tenants submitted a written tenancy agreement showing a tenancy start date of June 1, 2020, monthly rent of \$1,500.00, and a security deposit of \$750.00 being paid by the tenants to the landlord.

The rental unit is in the basement level of a home owned and occupied by the landlord on the upper level.

The tenants submitted a copy of the Notice, which showed the Notice was posted on the tenants' door on July 1, 2020, and listed an effective end of tenancy or move-out date of August 1, 2020. The Notice was signed and completed by the landlord.

The tenants said they received the landlord's Notice, on July 1, 2020, when they found it on their door. The tenants completed their application to dispute the Notice on July 7, 2020.

The reasons stated on the Notice to end tenancy were 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 or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
- The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the rental unit or property.

Pursuant to Rule 6.6 and 7.18, the landlord's agent proceeded first in the hearing to support the Notice.

In support of the Notice, the landlord's agent said she did not have any first-hand or direct knowledge of the issues listed in the Notice by the landlord. The landlord's agent said the only evidence or testimony she could provide would be in referring to the photographs and other evidence of the landlord.

The tenants' advocate objected to the landlord's agent's testimony as there would be no opportunity to cross-examine the maker of the Notice about the issues listed.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenants in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

Section 62 (2) of the Act stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the Act as follows:

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

Rule 1.1 states that the objective of the Rules is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

Rule 7.17 states the arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence.

Rule 7.21 allows a party an opportunity to question the other party's evidence.

In this case, I find the landlord's agent was unable to provide sufficient evidence to support the Notice. The landlord's agent confirmed that the only submissions she was able to make were as told to her by her sister and through a review of the photographs she was given by the landlord. The landlord's evidence has been excluded for the reasons provided prior in this Decision.

The landlord's agent further confirmed she had no first-hand, direct knowledge of the issues at hand, such as the condition of the rental unit, and could therefore not provide direct testimony.

I find it would be procedurally and administratively unfair to allow the submissions of the landlord's agent, in light of the tenant's advocate or the tenants being unable to cross-examine the respondent/landlord and as the landlord's evidence has been excluded from consideration.

For the above reasons, I find the landlord submitted insufficient evidence to support the causes listed on the Notice.

Therefore, I grant the tenants' application and order the One Month Notice dated and issued June 30, 2020, is cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

I also award the tenants recovery of their filing fee of \$100.00, pursuant to section 72(1) of the Act.

I authorize the tenants to deduct \$100.00 from a future monthly rent payment, to satisfy their monetary award. The tenants should advise the landlord when they make this deduction and the landlord may not serve the tenants a 10 Day Notice to End Tenancy for Unpaid Rent when the tenant makes the \$100.00 authorized deduction.

Conclusion

The tenants' application has been granted as I have ordered that the landlord's One Month Notice to End Tenancy for Cause, June 30, 2020, served July 1, 2020, is cancelled. The tenancy continues until it may otherwise legally end under the Act.

The tenants have been granted recovery of the filing fee of \$100.00 and they have been authorized to deduct this amount from a future rent payment.

The balance of the tenants' application not dealing with their request to cancel the Notice is dismissed, with leave to re-apply.

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: August 7, 2020

Residential Tenancy Branch