



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, PSF, FFT

Introduction

The tenants filed an Application for Dispute Resolution on July 8, 2020 seeking an order cancelling the 'One Month Notice to End Tenancy for Cause' (the "One-Month Notice"). Additionally, they applied for an order that suspends or sets conditions on the landlord's right to enter the rental unit, and for an order that the landlord provide services or facilities required by the tenancy agreement or law. Additionally, the tenants applied for a recovery of the filing fee for their application in this matter.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on August 13, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. One of the named tenants on the Application attended the hearing. The landlord attended with another party who acted as their agent. That individual was aware of the issues pertaining to the tenancy and the issuance of the One-Month Notice. I provided each party in attendance the opportunity to present oral testimony and make submissions.

The landlord confirmed receipt of the Notice of Dispute Resolution on July 11, 2020, delivered by the tenants in person. This included the documentary evidence prepared by the tenants at the time.

The landlord confirmed in the hearing that they did not provide documentary evidence for this hearing in advance. I afforded the landlord full opportunity to present documentary evidence orally in the hearing.

Preliminary Issue

The tenants initially applied on grounds that consider the landlord's duty to provide services or facilities to the tenants, as well as restriction on the landlord's right to enter the rental unit.

The tenant in attendance in the hearing stated that they amended their application on July 31, 2020. They seek to remove these claims as they "no longer consider these claims important or pertinent to dispute."

The landlord stated they did not object to this amendment. I am satisfied no other issues in this process rely on any evidence related to this portion, and so order the tenants application amended with these two grounds removed.

Two parties are named on the Application here. Only one of the tenants attended the hearing and confirmed they were prepared to speak on the other tenant's behalf. The landlord, and their agent attending the hearing with them, acknowledged this and were satisfied with the attending party's ability to speak for the other in their absence. The hearing thus proceeded.

Issue(s) to be Decided

Are the tenants entitled to an order that the landlord cancel the One Month Notice?

If the tenants are unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Are the tenants entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenants prepared documentary evidence in advance of this hearing. This includes two separate tenancy agreements – one for each tenant that applied to cancel the One-Month Notice:

- tenant HNT signed a tenancy agreement with the landlord on January 5, 2020, for the tenancy that started on January 1, 2020. The agreed-upon rent was \$500.00 monthly. The agreement shows they were required to pay a security deposit and pet damage deposit of \$250.00 each;
- tenant AD signed a tenancy agreement on April 21, 2020. The landlord signed this agreement with another tenant MM on December 26, 2019. The agreement was for the tenancy that started on January 1, 2020. The agreed-upon rent was \$1,200.00 monthly. The agreement show they were required to pay a security deposit of \$600.00.

The amounts of security deposits paid by each tenant was in dispute in this hearing. In the attending tenant's submission, other arrangements were made for each of the tenant applicants, separately with the landlord. The completion of the payments of deposits and the timing thereof was in dispute in the hearing.

The landlord issued the One-Month Notice on June 29, 2020. They served it in person and the tenant in attendance did not dispute this or provided evidence to the contrary. The landlord gave the reasons they issued the One-Month Notice as follows:

- security or pet damage deposit was not paid within 30 days as required by the tenancy agreement;
- a tenant or a person permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

The details of cause listed on the Notice included details of the landlord's allegations of non-payment of security deposits for both of these tenants. There is no other detail related to either of the tenants causing unreasonable disturbances or significant interference with any other occupants or the landlord.

The date provided by the landlord by which the tenants HNT and AD must move out of the rental unit was August 1, 2020. As of the date of this hearing, the tenants remain in the rental unit. The landlord did not name the tenant MM on the issued One-Month Notice.

Both the tenant in attendance and the landlord spoke to their understanding of the arrangement for payment of the deposits, providing differing accounts thereof.

The agent of the landlord in attendance provided detail on the second cause listed above. This was written accounts from other neighbouring residents who attested to the parties and gatherings at the rental unit. These caused ongoing disturbances and damages.

Analysis

The *Act* section 1 gives the definition for “tenancy” and “tenancy agreement”:

“tenancy” means a tenant’s possession of a rental unit under a tenancy agreement

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit

On my review of the evidence I find there are separate tenancy agreements in existence with each of the tenants who made the Application for this hearing.

The Residential Policy Guideline 13 (the “Guideline”) ‘Rights and Responsibilities of Co-tenants’ gives a statement of the policy intent of the legislation. It provides, on the definition of ‘tenant’, that this is a person who has entered a tenancy agreement to rent a rental unit. This correlates with the definition of “tenancy” and “tenancy agreement” in section 1 of the *Act*.

It is fact that in this present dispute, each tenant named on the One-Month Notice have separate tenancy agreements. The evidence shows they share common space within the rental unit. With separate tenancy agreements, each tenant is bound by a separate set of obligations, as is the landlord to each of these tenants respectively.

With two separate tenancy agreements, there are two separate tenancies. The *Act* outlines the provision for how a landlord may end “a tenancy”; however, it does not contain a provision for ending multiple tenancies. By application of the *Act*, a landlord is required to issue separate notices to end separate tenancies.

The tenants sharing a common space – as were HNT and AD under separate tenancy agreements – are not co-tenants. In the fact scenario here, there is a single One-Month Notice naming tenants under separate tenancy agreements. These are tenants sharing common space, and the responsibilities and obligations outlined in one tenancy agreement do not cross over into that of the other.

In the case of tenant AD, there is in place an agreement that is created jointly with the third tenant not named in the One-Month Notice, MM. This is a co-tenancy. The landlord presented that AD did not sign the agreement, and the tenant in attendance fraudulently provided a copy bearing AD’s signature. My decision does not turn on whether AD signed the agreement or not; rather, the situation with one tenancy agreement for AD and MM proves a co-tenancy

agreement. Here, the landlord singled out the tenant AD as bearing sole responsibility for the terms of the agreement where a co-tenancy exists.

Co-tenants share an agreement and are jointly and severally responsible for the terms therein. This applies to the security deposit to be paid by January 1, 2020. On this piece of the issue, I reduce the validity of the One-Month Notice on the issue of security deposits. It is not explained why the One-Month Notice does not apply to the tenant MM when they bear the same responsibilities under the same agreement with tenant AD.

Section 47 of the *Act* is the provision that deals with unreasonable disturbances by a tenant, or behaviour that puts the landlord's property at significant risk. This is the alternate reason the landlord indicated on the One Month Notice as cause to end the tenancy.

Section 52 states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) . . . state the grounds for ending the tenancy,
. . .and
 - (e) when given by a landlord, be in the approved form.

In this hearing, the evidence submitted by the tenant includes the One Month Notice. The landlord did not provide details of all the causes identified on this document in the space designated for this purpose. The document prompts the writer:

Describe what, where and who caused the issue and include dates/times, names etc.
This information is required. An arbitrator may cancel the notice if details are not provided.

The *Act* requires that notices to end tenancy issued by the landlord be in the approved form. This includes all required information a tenant would need to dispute the One Month Notice if necessary.

I find the landlord did not provide full details and sufficient information on the One Month Notice. Without details of the cause, I find the document does not comply with section 52 in the approved form. Even if I could accept the issuance of the single One-Month Notice on the basis of two tenancies, in the alternative I cannot uphold this document in which relevant and important details are not provided.

For the reasons above, I find the One-Month Notice issued on June 29, 2020 is invalid and of no legal effect.

As the tenants were successful in this application, I find they are entitled to recover the \$100.00 filing fee paid for this application. I authorize the tenants to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One-Month Notice is cancelled and the tenancy remains in full force and effect.

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 20, 2020

Residential Tenancy Branch