



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

The tenant filed an Application for Dispute Resolution on July 15, 2020 for an order that the landlord comply with the *Residential Tenancy Act*, regulations, or tenancy agreement. They also applied for a cancellation of the One Month Notice to End Tenancy for Cause issued by the landlord on July 1, 2020.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on August 21, 2020.

Both parties attended the hearing, and the landlord confirmed they received the evidence prepared by the tenant. The tenant likewise confirmed they had received the evidence prepared by the landlord. On this basis, I proceeded with the hearing at the scheduled time.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One Month Notice to End Tenancy for Cause?

Should the tenant be unsuccessful in cancelling the Notice, is the landlord entitled to an order of possession, pursuant to section 55 of the *Act*?

Is the tenant entitled to an order for the landlord to comply with the *Act*, regulations, and/or the tenancy agreement?

Background and Evidence

The landlord provided a copy of the tenancy agreement for this hearing. The landlord and tenant signed the agreement together on January 23, 2019. The tenancy started on February 1, 2019 and is continuing through to the present. The tenant pays \$2,150.00 each month on the 1st day of the month. The tenant paid a security deposit of \$1,075.00 on January 31, 2019. In the hearing, both parties agreed on these terms of the tenancy agreement in place.

The agreement specifies that “This price does not include utility fees.” The listed item “Heat” is checked. This indicates that it is included in the rent.

The tenant provided evidence on the service of the ‘One Month Notice to End Tenancy for Cause’ (the “One Month Notice”) document. They found this document on July 10, 2020 in their mailbox. The landlord gave two reasons for the One Month Notice on page two:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - jeopardize a lawful right or interest or another occupant of the landlord.

The tenant, via an agent who attended and provided testimony on their behalf, stated that a third page was part of the document they found in the mailbox. The One Month Notice is a three-page document. Although the third page was not provided into evidence, the agent of the tenant read a portion of this document, that which prompts the person completing the document to provide details. The space in which details normally are to appear was empty – the agent of the tenant confirmed this in the hearing.

In a document prepared in advance of the hearing as a timeline of events, the tenant states that they found the One Month Notice in their mailbox. This was with no prior notice, and no “further explanation of what is the reason of urging me to Move in couple Weeks.”

In the hearing, the tenant also presented their account of the history of payments. More recently, the tenant states they raised immediate concerns of rent payment to the landlord who agreed on payment one or two days past the normal due date.

The tenant also gave an account of the strata changing the service for the provision of gas within the property. This led to the landlord making changes to the agreement and then retroactively charging for past payments of gas. The tenant’s submission is that this

arrangement runs against what is provided for in the tenancy agreement. An undated message from the tenant to the landlord, provided in evidence, states: "I Just want to remind you that in our Contract of 2019 the Heat was included, the rest like electricity and Water is on me."

The tenant gave their account of how the landlord wanted to raise the monthly rent, and a letter stating this was dated in February 2020, yet only provided in May 2020. They did not provide a copy of this letter as evidence in this review. They also provided a copy of a phone text message from the landlord stating, "According to the government indicate, your rent is adjusted to \$2215/month . . . from March 2020." The date of this message to the tenant is March 1, 2020.

The landlord prepared a document that sets out their statement, dated July 15, 2020. They described penalty letters from the strata which involved short-term rentals by the tenant, "illegal activities" and nuisances. They stated this is one of the reasons for issuing the One Month Notice. They listed the monetary amounts of these violations, stating the tenant owes for that outstanding monetary amount.

Additionally, in a written submission the landlord set out how "All utilities fee is NOT included in the rent". This specifically is to set out how rent does not include gas, water and electricity. The strata for the building changed gas services in November 2019 and the gas service is now measured by an "in-suite meter". The landlord presented the total amount of bills from November 2019 to August 2020, and presented that the tenant owes for this amount.

Analysis

Section 47 of the *Act* states, in part:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (b) the tenant is repeatedly late paying rent;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

. . .

(3) A notice under this section must comply with section 52 [*form and content of notice to end 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 tenant a copy of the One Month Notice – this included only the first and second page of a three-page document. The tenant's agent clarified that three pages of the document were issued; however, the 'details' section on page three was empty with no details.

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord spoke to events involving strata fines and short-term rentals, as well as bill amounts owing and incidents of late rent payments. I find it more likely than not these details do not appear in the One-Month Notice issued by the landlord on July 1, 2020.

The landlord did not provide full details of the One Month Notice. Without these details, I find the document does not comply with section 52, and thus the core of section 47 is not established.

For this reason, I order the One Month Notice to be cancelled. I find the One Month Notice issued by the landlord on July 1, 2020 does not comply with the requirements set out in section 52.

The tenant also applied for dispute resolution for the landlord to comply with *Act*, regulation and/or the tenancy agreement. The section of the *Act* that governs this part of the tenant's Application is section 62, which states in part as follows:

- 62 (1) The director has authority to determine
- (b) any matters related to that dispute that arise under this Act or a tenancy agreement.
- (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or

tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The tenant presented evidence that the landlord stated to them, via phone text message, that they wished to increase the rent. I find this evidence is uncontradicted, and plain in its meaning, without further context provided by the landlord. I find it shows the landlord attempting to impose a rent increase without following section 42 of the *Act* which governs timing and notice of rent increases. I accept the tenant's evidence that the landlord provided no advance notice via phone text message. Additionally, though not provided by the tenant, I find their testimony credible that the landlord gave a letter dated February 2020 months later, in May 2020.

I here draw the landlord's attention to this relevant and governing section of the *Act*:

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- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.

Specific portions of the *Act* strictly govern how and when to increase the monthly rent. Additionally, the *Residential Tenancy Act Regulations* s. 23 contains provisions on how to apply for a director's order where there is an extraordinary amount of increase in property operating costs.

Regarding the provision of utilities, and payment for gas bills, I find the agreement as it remains is not clear on the provision of heat. On the agreement, the indication is that 'heat' is included in the rent. The tenant takes the position that this is what gas (as a utility) is for, and it is included in the rent. In the hearing, the landlord did not explain fully what 'heat' as a term in the agreement refers to.

I make no finding on the actual term of the agreement; that is, I cannot resolve the question of 'heat' in its relation to the provision of a utility and whether that is a separate cost. Fortunately for both parties, this service has not ended or been terminated by the service provider. Its relation to other agreements in place with the strata is not a matter for me to decide here.

I send this decision on the issues raised, with reference to the important section of the *Act* governing this situation, in order to raise the landlord's awareness. For each issue of a rent increase and billable utility costs, the *Act*, and the regulations apply on all transactions. I urge

the landlord to familiarize themselves with the agreement in place and provide clarity on the agreement referring to utilities.

I trust each of the parties to maintain an open and respectful mode of communication going forward.

Conclusion

For the reasons above, I order the One Month Notice issued on July 1, 2020 is cancelled and the tenancy remains in full force and effect.

I so order the landlord to carry on their interactions with the tenant with the *Act*, the regulations and the tenancy agreement provisions in mind. I am satisfied the tenant had the chance to raise their concerns in the hearing which was the appropriate avenue to do so.

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 24, 2020

Residential Tenancy Branch