



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 21, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a One Month Notice for Cause dated July 15, 2020;
- an order restricting or suspending the Landlord's right to enter the rental unit; and

The Landlord attended the hearing at the appointed date and time. The Tenant called into the hearing at 9:40AM. At the beginning of the hearing, the parties acknowledged receipt of their respective application package 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*.

Preliminary Matters

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 based on the One Month Notice to End Tenancy for Cause. The Tenants' request for an order restricting the Landlord's right to enter is dismissed with leave to reapply.

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*.

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 Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order to cancel a One Month Notice to End Tenancy for Cause (the "One Month Notice") dated July 15, 2020, pursuant to Section 46 of the *Act*?
2. If the Tenants are not successful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on February 1, 2020. The Landlord stated that the Tenants are required to pay rent in the amount of \$1,400.00 each month, while the Tenant stated that they have been required to pay \$1,450.00. The parties agreed that no deposits were paid to the Landlord. The Landlord stated that the parties only have a verbal agreement and that there is no written tenancy agreement between them. The Landlord stated that one of the Tenant's moved out and that the others are only occupants. The Tenant stated that they all moved in together at the same time and that the Tenant who moved out was unable to pay his portion of the rent.

The Landlord stated that the Tenants have been provided with several warnings from the City Bylaw Officers as well as Police regarding noise complaints and suspected criminal activity. The Landlord stated that he and the neighbours surrounding the rental have voiced their concerns, however, the issues persist. The Landlord is seeking to end the tenancy as a result. The Landlord provided no documentary evidence in support of his testimony.

For the above mentioned reasons, the Landlord stated he served the Tenants in person with the One Month Notice on July 15, 2020 with an effective vacancy date of August 1, 2020.

The Tenant confirmed having received the One Month Notice on July 15, 2020. The Tenant stated that the One Month Notice served by the Landlord is an outdated form and therefore, should be found invalid. The Tenant responded by stating that the Tenants have complied with the City Bylaw officers' requests and that there have been no Police incidents at the rental property. The Tenant stated that the neighbour complained about the Tenants having fireworks one evening, however, the Tenant stated that they were only used on one occasion to celebrate Canada Day.

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. The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on July 15, 2020 with an effective vacancy date of August 1, 2020, by serving it to the Tenants in person. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I note that Section 55 of the Act states that in order for a Landlord to be granted an order of possession, the Landlord's notice to end tenancy must comply with Section 52 of the Act relating to form and content.

Section 52 of the Act States; 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) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.***

I find that the Landlord served the Tenants with a One Month Notice on a form that is dated July 8, 1996. I find that this form is outdated and contains outdated information. Therefore, I find that the One Month Notice is not in the approved form and does not comply with Section 52 of the *Act*. In light of the above, I cancel the One Month Notice, dated July 15, 2020. I order that the tenancy continue until ended in accordance with the *Act*.

Conclusion

The Tenants' Application is successful. The One Month Notice issued by the Landlord dated July 15, 2020 is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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 27, 2020

Residential Tenancy Branch