



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for End of Employment (the One Month Notice); and
- Recovery of the filing fee.

The hearing was originally convened by telephone conference call on July 27, 2020, at 11:00 AM and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The hearing was subsequently adjourned to allow the parties to gather and submit documentary evidence for my consideration in relation to whether a tenancy under the Act exists. An interim decision was made on July 27, 2020, and the reconvened hearing was set for August 31, 2020, at 11:00 AM. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the Branch) in the manner requested at the original hearing. For the sake of brevity, I will not repeat here the details of the Interim Decision and as a result, the Interim Decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on August 31, 2020, at 11:00 AM and was attended by the Landlord who appeared on time and ready to proceed. The Tenant did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In the Interim Decision I ordered the Landlord to serve on the Tenant, in accordance with sections 88-90 of the Act, and submit to the Branch, any documentary or other evidence they intended to rely on at the reconvened hearing as soon as possible, and

not later than 7 days before the date of the reconvened hearing. In the reconvened hearing the Landlord stated that they posted their documentary evidence to the door of the Tenant's rental unit on approximately August 19, 2020, and also sent it by registered mail. In support of this testimony the Landlord submitted photographs showing the documentary evidence posted to the door of the rental unit and the registered mail at the mailbox as well as the registered mail tracking number. Pursuant to section 90 (c) of the Act, I find that the Landlord's documentary evidence was deemed served on the Tenant on August 22, 2020, three days after it was posted to the door of the rental unit pursuant to section 90 (c) of the Act and in compliance with my order. As a result, I have accepted it for consideration in this matter. In any event, the tracking information for the tracking number shown on the registered mail slip shows provided by the Landlord shows that the registered mail was sent on August 17, 2020, and delivered August 19, 2020.

No documentary evidence was submitted for my review by the Tenant.

Although I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

Preliminary Matters

A matter of jurisdiction was raised at the original hearing and I adjourned the hearing to provide the parties with an opportunity to submit documentary evidence for my consideration with regards to whether a tenancy under the Act exists.

The Landlord acknowledged that they rent a single family home from the property owner and that the basement suite of this home was rented to the Tenant. However, the Landlord stated that they are authorized by the owner of the property, who is their landlord, to rent out the basement suite of the home on the owner's behalf and that all rent paid for the basement suite goes to the Landlord. The Landlord submitted a letter from the property owner in support of this testimony. As a result, the Landlord stated that a tenancy under the Act exists between themselves and the Tenant.

The Tenant did not attend the reconvened hearing to provide any evidence or testimony for my consideration in relation to jurisdiction.

Section 1 of the Act includes in the definition of a landlord, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a

tenancy agreement or exercises powers and performs duties under the Act, the tenancy agreement or a service agreement.

Based on the Landlord's affirmed and uncontested testimony and the documentary evidence before me from the alleged owner of the rental unit, I am satisfied that the Landlord is either an agent of the owner in relation to renting out the basement suite or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement and exercises powers and performs duties under the Act and the tenancy agreement. As a result, I find that they meet the definition of a landlord under the Act and I therefore accept jurisdiction to hear and decide this matter.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession for the rental unit pursuant to section 55 (1) of the Act?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Landlord stated that the Tenant has significantly interfered with or unreasonably disturbed the Landlord or another occupant of the residential property by repeatedly shouting at them and their son and uttering threats against them. The Landlord also stated that the Tenant slapped their son. The Tenant did not appear at the hearing to refute this testimony or provide any evidence or testimony for my consideration.

As a result of the above, the Landlord stated that they personally served a One Month Notice on the Tenant on May 31, 2020.

Although several different copies of a One Month Notice were submitted by the Landlord for my review, all copies were signed and dated May 31, 2020, contained an effective date of July 1, 2020, stated that they were served on May 31, 2020, and stated the following grounds for ending the tenancy:

- the tenant or a person permitted on the residential property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk.
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:
 - has caused or is likely to cause damage to the landlord's property,
 - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Two of the three copies also stated that the tenant or a person permitted on the property by the tenant has caused extraordinary damage.

Analysis

As the Tenant did not appear at the reconvened hearing for their Application seeking cancellation of the One Month Notice, I dismiss their Application, including their request for recovery of the filing fee, without leave to reapply.

Although I advised the Landlord in the hearing that they would receive an Order of Possession for the rental unit pursuant to section 55 (1) of the Act as the Tenant's Application was dismissed, I was satisfied by the Landlord that they had grounds to end the tenancy under section 47 of the Act, and the One Month Notice complied with section 52 of the Act; upon further review and consideration of the documentary evidence before me, I find that the One Month Notice is not valid as it was signed, dated, and served on the Tenant on May 31, 2020, during the prohibition on the service of all notice's to end tenancy as set out in Emergency Order #M089, which was not repealed until Emergency Order #M195 was issued on June 24, 2020.

Based on the above, I order that any One Month Notice's dated May 31, 2020, are cancelled and of no force or effect.

I also order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the Act.

Conclusion

The Tenant's Application is dismissed in its entirety, without leave to reapply.

However, as the One Month Notices were dated and served during the prohibition on notices to end tenancy, I order that any One Month Notices dated May 31, 2020, are therefore cancelled and that the tenancy continue in full force and effect until it is ended by one of the parties 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 31, 2020

Residential Tenancy Branch