



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, OLC

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on July 27, 2020 seeking an order to cancel the One Month Notice to End Tenancy (the “One Month Notice”) for cause. Additionally, they applied for an order that the landlord provides services or facilities required by the tenant, as well as an order that the landlord comply with the legislation and/or tenancy agreement.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on August 31, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

One of the tenants and landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

Both parties confirmed receipt of the evidence prepared by the other. On this basis, the hearing proceeded.

Preliminary Matters

The representative for the tenant who attended with them at the hearing asked for additional time to prepare. They asked for an adjournment to afford them more time to review the material and prepare submissions on behalf of the tenant.

The landlord objected to this stating they need to have the matter concluded, with their priorities and commitments changing very rapidly.

With consideration I determined that the One Month Notice is a matter of urgency. The representative for the tenant in attendance stated they had time to review the materials in a cursory fashion before the hearing. Given that they attended the hearing with the tenant, and had some knowledge of the issue, I decided to proceed.

The tenant introduced the matter of an essential service being stopped by the landlord. They stated that on one occasion the landlord turned off the hot water to the unit, presumably to discourage the tenant from taking baths beyond preferred nighttime hours. This is the essence of the tenant's application that the landlord must provide a service.

Other tenant submissions concerned the landlord failing to comply with the legislation and/or the tenancy agreement.

In the hearing I informed both parties that these matters were outside the scope of the immediate matter in this hearing, that which concerns the validity of the One Month Notice.

By Rule 2.3 of the Residential Tenancy Branch Rules of Procedure, I dismiss these other claims involving the landlord complying with the legislation and/or the tenancy agreement. I find these are unrelated to the immediate issue of the end of tenancy. The tenant has leave to reapply on these separate issues in a separate hearing process.

Issue(s) to be Decided

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

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

The landlord and tenant each verified that there is no documented tenancy agreement in place. The tenant provided that they moved into the unit 6 years ago, on July 1, 2014. At that time, the rent was \$700 per month and they initially paid a security deposit of \$350.00. The landlord verified that it was a verbal agreement. Since that time, there have been rent increases.

The tenant provided a copy of the “One Month Notice” document. The landlord served this document on July 20, 2020 in person to the tenant. On page 2 of the document, the landlord provided one reason for their issuing this document:

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The agent of the landlord in attendance at the hearing spoke to the specific behaviours of the tenant that led to the issuance of this One Month Notice. This is noise emanating from the tenant’s unit which is immediately above that of the landlord. This leads to a high frequency of messaging with the tenant in the evening, prompted by the noise, with requests for the noise to end. The agent of the landlord provided that there are jobs to attend, and school is beginning in the very near future.

In the hearing, the tenant provided that there is no conduct by the tenant that can be considered illegal activity. They provided that the use of facilities in the unit is not extremely late or at an indecent hour. The landlord’s standard for peace and quiet is “unreasonable” in their estimation. The messages from the landlord late into the evening, and into the early morning a.m. in themselves constitute a form of harassment.

The tenant also provided evidence of the text messages that from the landlord to the tenants on a typical evening. This is when the landlord is prompted by the noise in the unit to send messages asking for quiet.

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:

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) 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. . .

. . .

(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 matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord spoke to the reason in oral testimony; however, there is not sufficient evidence to show the One Month Notice is valid and compliant with the provisions of section 52(d). The reason indicated for ending the tenancy on the One Month Notice is not that the landlord describes. There is no evidence to show the tenant engaged in illegal activity.

I find the landlord issued the One Month Notice on an unsubstantiated reason. For this reason, 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 20, 2020 does not comply with the requirements set out in section 52.

Conclusion

For the reasons above, I order the One Month Notice issued on July 20, 2020 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 31, 2020

Residential Tenancy Branch