



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC LRE RP FFT

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on August 9, 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 suspending or setting conditions on the landlord’s right to enter the rental unit; an order that the landlord make repairs to the unit; and compensation for the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 21, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The tenants and landlord each attended the hearing. I provided each party the opportunity to present oral testimony during the hearing.

The landlord confirmed receipt of evidence via email that the tenants prepared in advance. This was a list of 10 items, including photos of repairs. Additionally, the tenants sent the notice of this dispute resolution hearing and their evidence to the landlord via registered mail. In the hearing, the landlord confirmed their receipt of this material.

There is no record of the tenants submitting this documentary evidence to the Residential Tenancy Branch, neither at the time they applied nor in advance of the hearing.

The landlord stated that they did not prepare documentary evidence in advance of the hearing.

Preliminary Matters

The tenants presented in the hearing that they submitted their prepared evidence in digital format to the Residential Tenancy Branch. The evidence does not appear in the record for this hearing. I stated this to the parties in attendance at the outset and afforded the tenants full opportunity to speak to the matters at hand in as much description and detail as needed. I did so with the consideration that the matter at hand is that of an end of tenancy and should properly be dealt with in an expedient and efficient manner.

The hearing process is managed by the Residential Tenancy Branch Rules of Procedure which are in place to ensure a fair, efficient and consistent process for resolving disputes. Rule 3.10.5 provides: "If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered."

In this hearing, I determined the matter warrants a fulsome hearing process, and undertook to hold the hearing based on the testimony of both parties. There is no digital-format documentary evidence to consider. Both parties had full opportunity since the application date to ensure evidence was present and prepared in advance.

With consideration I determined that the One Month Notice is a matter of urgency. The tenants applied for orders that the landlord carry out repairs they had previously requested and an order that suspends or sets conditions on the landlord's unit access.

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 issued by the landlord on July 30, 2020.

By Rule 2.3 of the Residential Tenancy Branch Rules of Procedure, I dismiss these other claims. 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?

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

Background and Evidence

The tenants and landlord each verified that there is a documented tenancy agreement in place; however, neither party submitted a copy of the agreement for the hearing. The tenants stated that the tenancy started on February 15, 2018. The rent remains at the amount of \$2,600.00 per month and they initially paid a security deposit of \$1,300.00. The landlord verified these details in the hearing.

The tenant provided a copy of the “One Month Notice” document, entered as evidence at the time of their Application. The landlord served this document on July 30, 2020 by email on that day. Additionally, the landlord served the One-Month Notice via registered mail on August 7, 2020. On page 2 of the document, the landlord provided the reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- 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:
 - put the landlord’s property at significant risk
- Tenant has not done required repairs of damage to the unit/site/property/park
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property park.
- Tenant has assigned or sublet the rental unit/site/property/park without landlord’s written consent.
- Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

In the hearing the landlord spoke to the specific problems that led to the issuance of this One Month Notice. This involved a proper allocation of rooms of the property that are rented to the tenants in line with the landlord’s insurance policy. They spoke to the issues of communication surrounding this issue. At some point, the insurance company

stated that the tenants were not allowed to rent one of the rooms available in the unit; only the landlord was allowed to do so. The landlord maintained that this is what was contained in the tenancy agreement; however, a subsequent verbal agreement made the further arrangement of the rooms available for the tenant to rent. The landlord tried more recently to renegotiate this arrangement in July; they stated the tenants refused the discussion on this issue.

In the hearing, the landlord stated they had the evidence in an email, wherein the tenants stated their refusal, to say 'we're losing the rent.'

This also relates to the landlord identifying the issue on the One Month Notice of the tenants knowingly giving false information to prospective tenants and subletting the rental unit without the landlord's written consent. They again referred to a 'second agreement' which reflects an arrangement that differs from that in the original tenancy agreement.

The tenants' viewpoint is as stated in their Application. The landlord desires to move into the one bedroom that forms part of their unit. This would enable the landlord to "get a discount on the property and insurance". The One Month Notice is an attempt by the landlord to "force [them] to accept [the] request." The tenants state the landlord told them he would cancel the One Month Notice if they would "come to a settlement."

On the matter of rent, the landlord stated that primarily the tenants were late for paying a utility bill that accumulated over time. This then appeared on their notice of property taxes. Additionally, the landlord mentioned that they were consistently not able to pay the full amount of rent.

The tenants countered on this point to state that the bills were sent to the house address when properly registered as such. Additionally, the bank only allowed the transfer of an amount that was \$100.00 less than the required amount of rent. They attempted transfers to the landlord who agreed to the exceptions; however, their transfers were not accepted.

For repairs, the landlord maintained that there was communication between them and the tenants regarding repairs to the unit. They believe the tenant has responsibility for some repairs to the unit. By contrast, the tenants maintain there were no requests to repair from the landlord. An issue of the boiler starting to leak arose more recently; however, the landlord provided that this occurred after they issued the One Month Notice.

Finally, the landlord provided that the tenants have a pet and this arrangement runs counter to what was provided in the tenancy agreement originally. The tenants did not pay a pet damage deposit. By contrast, the tenants maintain that they had this bird “from the very beginning” and the landlord knew and stated: ‘we don’t need to put it on the agreement’.

Analysis

The *Act* section 47 provides the reasons for a landlord ending a tenancy; any one or more of those reasons may apply. These reasons give cause for the landlord to issue a One Month Notice. This document must also comply with the form and content requirements set out in section 52.

In this matter, the onus is on the landlord to show that they have cause to end the tenancy. The landlord spoke to the reasons by providing oral testimony; however, evidence in their account is not sufficient to show the One Month Notice is valid.

I find the landlord issued the One Month Notice on unsubstantiated reasons. The tenants have provided evidence in the form of oral testimony to challenge that of the landlord. The landlord’s testimony does not meet the burden of proof to show the reasons for the grounds they indicated on the document. This finding is based on a balance of probabilities when I weigh the landlord’s evidence against that of the tenants.

The landlord referred to the evidence they have in the form of emails and other communications between themselves and the tenants. This was for the arrangement of available rooms the tenant could rent and to show late payment of rent. They did not provide a copy of these communications to refer to or add weight to their testimony, neither to the Residential Tenancy Branch nor the tenants. This means there is insufficient evidence to prove those reasons for ending the tenancy.

Both parties acknowledged that the initial agreement had changed, and the parameters of what was available for the tenants to rent to others had changed. As far as I am able to discern, the landlord made the choice to revert or further alter the arrangement for reasons relating to insurance. They did not clearly present these points; therefore, I find the reasons are not in place to warrant the issuance of the One Month Notice on any of those related grounds.

Similarly, the landlord did not clearly present a timeline or list specific repairs identified or how that information was communicated to the tenants. The evidence for this ground is not present in the landlord's account. The landlord spoke to an issue with the boiler; however, they specified this occurred after they issued the One Month Notice.

I find as fact that the tenants keep a pet bird in the unit. This does not constitute a breach to the tenancy agreement. I find the evidence of the tenants credible on this point. There is no just cause to end the tenancy for this reason.

For these reasons, I order the One Month Notice issued by the landlord on July 30, 2020 to be cancelled. There is not sufficient evidence to prove the grounds listed on that document are valid.

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 issued on July 30, 2020 is cancelled. 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: September 22, 2020

Residential Tenancy Branch