



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, FFT

Introduction

On August 11, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he was not sure if the Landlord was served with the Notice of Hearing and evidence package as his friend was supposed to deal with these documents for him. The Landlord confirmed that she did not receive this package, and she stated that she called the Residential Tenancy Branch in August 2020 to obtain the correct numbers to call in to attend the hearing.

Based on this undisputed testimony, I am not satisfied that the Landlord was served with the Notice of Hearing and evidence package. As such, I dismiss the Tenant’s Application to dispute the Notice without leave to reapply. However, the other issues on this Application are dismissed with leave to reapply.

The Landlord advised that she did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 15, 2020, that rent is currently established at \$2,100.00 per month, and that it is due on the first day of each month. A security deposit of \$1,050.00 was also paid.

The Landlord advised that the Notice was served to the Tenant by sending it by registered mail on July 30, 2020 and the Tenant confirmed that he received this on August 2, 2020. The reason the Landlord served the Notice is because the “Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.” The Notice indicated that the effective end date of the tenancy was August 30, 2020.

Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided by the parties as it is essential to the matter at hand. A copy of this Notice was provided by both parties after the hearing.

The Landlord advised that she attempted to sell her house and gave the Tenant 24 hours written notice for multiple real estate showings; however, the Tenant refused to allow entry, so these viewings were cancelled. She attempted to work with the Tenant, but she was met with constant obstructions and he would not cooperate. She stated that her daughter served the Tenant with a notice to enter the rental unit on July 29, 2020 for entry dates on July 30, August 1, and August 2, 2020, although she was not sure how this notice was served to the Tenant. The Tenant advised her and the realtor that they could not enter.

The Tenant acknowledged that he received this notice on July 29, 2020 by hand; however, the Landlord's request to enter on July 30, 2020 did not comply with the *Act* as he would not have been given a full 24 hours notice. He stated that one of the other scheduled viewings for that weekend would not work for his schedule, but the other viewing was fine. He texted the Landlord and requested that she not enter the rental unit. He stated that he did not forcibly prevent anyone from entering the rental unit.

The Landlord advised that she never attempted to enter the rental unit as the Tenant told her not to. She also submitted that she had an agreement with the Tenant to have cleaners go in and clean the rental unit; however, they stopped as the Tenant was verbally abusive towards one of the cleaners to the point that one of the cleaners feared for her safety. She advised that she sent an email to the Tenant warning him about his inappropriate conduct.

The Tenant confirmed that he had an agreement with the Landlord about having cleaners into the rental unit; however, he refuted that he was abusive towards them. He stated that the cleaners would not remove their shoes in the rental unit, and he did not approve of this, so he asked them three times to remove them. He denied that he yelled at them.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

As the Tenant did not serve the Notice of Hearing package, I have dismissed his Application to dispute this Notice in its entirety. However, pursuant to Section 55(1) of

the *Act*, in order to grant the Landlord an Order of Possession, I must still consider the validity of the Notice.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 29 of the *Act* outlines the Landlord's requirements to give notice to the Tenant if she wanted to enter the rental unit. Specifically with respect to this instance, it states that she must give the Tenant at least 24 hours written notice that includes the following information: the purpose for entering, which must be reasonable, and the date and the time of the entry, which must be between 8:00 AM and 9:00 PM unless the Tenant otherwise agrees. Once the proper written notice is served, the Landlord can enter regardless of if the Tenant refuses.

Section 90 of the *Act* outlines when documents are deemed to have been received and states that any document served by mail is deemed received on the fifth day after it is mailed, and any document served by attaching it to a door or by leaving it in a mailbox or mail slot is deemed received on the third day after it is attached or left there. If the document is served personally to the Tenant, then it is deemed received immediately.

Section 47 of the *Act* allows a Landlord to end a tenancy for cause if any of the reasons cited in the Notice are valid. With respect to this Notice, Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

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

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As such, the onus is on the party issuing the Notice to substantiate the validity of the

reason for service of the Notice.

With respect to the reason on the Notice, I find that the Landlord has provided insufficient evidence to support that the Tenant has engaged in any illegal activity that would substantiate the grounds for ending the Tenancy. As such, I am not satisfied of the validity of the Notice. I find that the Notice is cancelled and of no force and effect.

During the hearing, the parties were provided with information pertaining to the issues brought forth that led to the issuance of this Notice. The parties were advised that provided that the Landlord served the Tenant with the proper written notice for entry and that the correct amount of days for service had elapsed, she could enter the rental unit despite the Tenant disagreeing with this entry, and that the Tenant could not refuse entry.

Furthermore, with respect to alleged incident with the cleaners, the Landlord did not submit any evidence to support that this incident happened. Even if she had provided evidence corroborating this, this may not sufficiently fall under the reason on the notice of illegal activity anyways. However, while the Tenant acknowledged that there was a disagreement with the cleaners and that he wanted them to remove their shoes when in the rental unit, I find it more likely than not that it is possible that this issue escalated beyond the point that the Tenant testified to. As such, the Tenant is cautioned that any documented inappropriate behaviour could form the basis for ending the tenancy.

Both parties were encouraged to understand their rights and responsibilities under the *Act* and work amicably together to accommodate each other to ensure a successful tenancy.

As the Tenant did not serve the Notice of Hearing package and as his Application was subsequently dismissed, I do not find that the Tenant was successful. Therefore, the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of July 30, 2020 to be cancelled and of no force or effect. This tenancy continues 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: September 29, 2020

Residential Tenancy Branch