



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to comply with the Act pursuant to section 62.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 19 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant testified the tenant personally served the landlord with the Notice of Hearing and Application for Dispute Resolution on August 8, 2020. The tenant testified the landlord told him at the time of service that he, the landlord, would not attend the hearing and “do what you want”.

Further to the testimony provided by the tenant, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on August 8, 2020 pursuant to section 89 of the Act.

Preliminary Issue

I explained to the tenant 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where the tenant has applied to cancel a landlord's One Month Notice, I explained that the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

As the landlord did not attend and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the *Act* and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I order that the tenant's application to cancel the Notice to End Tenancy is granted. I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to comply with the *Act* pursuant to section 62.

Background and Evidence

The tenant testified the landlord purchased the property, a house, and the parties entered into a tenancy agreement on August 1, 2019. The tenant stated he had lived in the unit for “not sure how many years”. The agreement is for monthly rent of \$1,250.00 payable on the first of the month. The tenant provided a security deposit of \$625.00 which the landlord holds.

The tenant testified that the co-tenant named in the agreement passed away on June 16, 2020. The landlord issued a One Month Notice on August 8, 2020 claiming there were an unreasonable number of occupants in the unit. The tenant stated that following the death of the co-tenant, family and friends came to the unit to pay their respects. The tenant stated he lives alone in the unit with his son. He applied to cancel the Notice within the ten-day period.

The tenant testified that since the landlord purchased the property, he frequently enters the unit without permission. Sometimes, the landlord claimed to have sent a text to a relative of the tenant to say he was coming in, as the tenant does not have a phone. The tenant objects to the landlord's notification in a manner outside the requirements of the Act.

Five days before the hearing, the tenant testified he came out of his room to find the landlord standing, uninvited, in the kitchen.

The tenant requested that the landlord comply with the provisions of the Act regarding entering the unit.

Analysis

The landlord must always follow the proper process for lawful entry into a tenant's home.

The Act states as follows:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I accept the tenant's uncontradicted testimony that the landlord has periodically entered the unit without complying with the notice provisions of the Act.

If a tenant thinks the landlord has entered illegally, they should ask them in writing to follow the required process for legal entry. A tenant can also apply for dispute resolution asking for monetary compensation, restrictions on the right to enter, or an order that allows the tenant to change the locks and keep the only keys – returning them to the landlord upon moving out.

The tenant has only requested that the landlord comply with the Act. I find the tenant has met the burden of proof on a balance of probabilities that the landlord has periodically entered the unit without complying with the notice provisions of the Act.

Accordingly, I direct the landlord to comply with the provisions of the Act respecting entry to the unit.

Conclusion

I dismiss the One Month Notice to End Tenancy for Cause and order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

I direct the landlord to comply with the provisions of the Act respecting entry to the unit.

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: October 05, 2020

Residential Tenancy Branch