



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, DRI, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on August 28, 2020, for an order for the Landlord to comply with the *Act*, for a monetary order for compensation for my monetary loss or other money owed, to dispute a rent increase that is above the amount allowed by law, and to recover their filing fee. The matter was set for a conference call.

Both the Landlords and the Tenant and their husband attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matters- Related Issues

I have reviewed the Tenant’s application, and I note that they have applied to cancel a notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant’s request to cancel the Notice. As some of these

matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims to request for an order for the Landlord to comply with the *Act*, for a monetary order for compensation for my monetary loss or other money owed, and to dispute a rent increase that is above the amount allowed by law.

I will proceed with this hearing on the Tenant's remaining claim to cancel a One Month Notice to End Tenancy for Cause (the "Notice") issued on August 28, 2020, and to recover their filing fee.

Issues to be Decided

- Should the Notice issued on August 28, 2020, be cancelled?
- If not, are the Landlords entitled to an order of possession?
- Is the Tenant entitled to the recovery of the filing fee of their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties testified that the Landlord personally served the Tenant with the Notice to end tenancy on August 28, 2020. Both parties submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord*
- *Tenant or 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 Notice states that the Tenant must move out of the rental unit by September 30, 2020. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Notice was issued due to the Tenant and the Tenant's husband's behaviour toward the Landlords and the occupants of the other rental unit located on the rental property.

The Landlord testified that the occupants of the other rental unit had complained about the Tenant and the Tenant's husband, stating that the Tenant never speaks to them, that they did not welcome them to the area when they moved in, and that they glare at them from across the back yard. The Landlord testified that on August 12, 2020, the cat of the occupants of the other rental unit had gotten out into the back yard and that when their son had gone out to collect the cat the Tenant's husband had sworn at the son. The Landlord also testified that the occupants of the other rental unit have complained about the sounds of fighting coming from the tenant's rental unit and that they do not use the shared back yard as they do not want to interact with the Tenant. The Landlord submitted two witness statements from occupants of the other rental unit into documentary evidence.

The Landlord testified that the Tenant had gotten into an argument with them on August 27, 2020, and that during this argument, the Tenant had sworn that them and was hostile towards them and their contractor that this working on the property. The Landlord submitted a witness statement from their contractor into documentary evidence.

The Landlord testified that due to these incidents and they decided to end the tenancy for the safety of the children of occupants of the other rental unit.

The Landlord testified that after they issued the Notice, the Tenant's husband went out to the balcony, glared at the Landlord's contractors, ripped up a piece of paper and violently threw it in the direction of the contractor.

The Tenant agreed that they have not spoken to the new occupants of the other rental unit very much, but that it was due to the fact that they had just moved in during the COVID-19 pandemic and that these new renters were not part of the reduced social bubble. The Tenant testified that they do not glare at any member of the family living in the other rental unit on the property.

The Tenant agreed that they did get into a heated discussion with the Landlord on August 27, 2020, but that it was because the Landlord refused to listen to their concerns. The Tenant testified that they were not aggressive and that the contractor's witness statement supported their version of events.

The Tenants testified that they did not glare at nor rip up a piece of paper and throw it at the Landlord's contractor.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy on August 28, 2020. Pursuant to section 47 of the Act, the Tenant had ten days to dispute the Notice. I find the Tenant had until September 8, 2020, the first business day after the ten-day deadline, to file their application to dispute the Notice. The Tenant filed its application on September 1, 2020, within the statutory time limit.

I have reviewed the Landlords' Notice and testimony, and I find that the crux of the Landlords' claim is that the Tenant's actions have significantly disturbed the Landlord and the other occupants of the rental property.

I have also reviewed the witness statements submitted into documentary evidence by the Landlord to support their claim. Where I can understand that individuals may have been disturbed by witnessing or taking part in the events described in this statement, I find that the events described are insufficient cause to end this tenancy.

Overall, I find that the Landlord has not proven cause sufficient to terminate this tenancy for any of the reasons given on the Notice issued. Therefore, I must allow the Tenant's application to cancel the Notice.

I find the Notice dated August 28, 2020, of no effect, and the tenancy continues until it is ended in accordance with the *Act*.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is allowed to take a one-time deduction of \$100.00 from their next month's rent in satisfaction of this award.

Conclusion

The Tenant's application to cancel the Notice, issued August 28, 2020, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00 from their next month's rent.

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 14, 2020

Residential Tenancy Branch