



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT
 OPC, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on October 8, 2020. The Tenants applied to cancel a One-Month Notice to End Tenancy for cause (the “*Notice*”) issued September 29, 2020, for an order for the Landlord to comply with the *Act* and the return of their filing fee.

The Landlord’s Application for Dispute Resolution was made on October 15, 2020. The Landlord is requesting an order of possession to enforce a One-Month Notice to End Tenancy for cause (the “*Notice*”) issued September 29, 2020, and to recover the filing fee paid for this application.

The Landlord’s Agent (the “*Landlord*”) and two Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were 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 require 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 evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters – Related Issues

I have reviewed both of the applications that I have before me, and I note that they have both applied to either cancel or enforce a Notice to end tenancy, and that the Tenant have also applied for one other issue. I find that this other issue is not related to the Notice. As this matter does 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.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply, the Tenants' claim for an order of the Landlord to comply with the Act.

I will proceed with this hearing on the Tenants' claim to cancel the Notice and to recover the filing fee for this hearing, as well as the Landlord's claim to enforce the notice and to recover the filing fee for this hearing.

Preliminary Matters – Parties Request for Legal Advice

Throughout these proceedings, the Landlord, as well as one of the Tenant's repeatedly sought legal advice from this Arbitrator.

This Arbitrator refused to provide legal advice for either party, directing both parties to the Residential Tenancy Branches information line for assistance.

When this Arbitrator refused to provide legal advice, one of the Tenants became upset and disrespectful towards this Arbitrator.

When this Arbitrator continued to refuse to provide legal advice to this Tenant, the Tenant disconnected from these proceedings.

Issues to be Decided

- Should the Notice dated September 29, 2020, be cancelled pursuant to section 47 of the Act?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?

- Is the Landlord entitled to the recovery of the filing fee for her application?
- Are the Tenants entitled to the recovery of the filing fee for her 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 agreed that the Landlord had served the Notice to End tenancy to the Tenants on September 29, 2020, by personal service, indicating that the Tenants was required to vacate the rental unit on October 31, 2020. The reasons checked off by the Landlord within the Notice are as follows:

- *Tenant or a person permitted on the property by the Tenant has:*
 - *Put the Landlord's property at significant risk*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, is likely to:*
 - *Damage the Landlord's property*

The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving it. The Tenant testified that they filed to dispute the Notice on October 8, 2020.

The Landlord testified that they were ending the Tenants' tenancy due to a request by the strata council to get one of the Tenants out of the building. The Landlord testified that the strata council believes that one of the Tenants is doing illegal drugs in the rental unit and that they believe that Tenant and the Tenant's guests are doing other illegal activities in the rental unit.

The Landlord testified that the Tenant's boyfriend overdose on illegal drugs and had to be taken away by the police. The Landlord provided surveillance pictures of the incident to into documentary evidence.

The Landlord also testified that an access door to the rental property had been propped open to allow people to freely access the building, stating that it is the belief of the strata building manager that it was this Tenant who had propped the door open.

The Landlord also testified that the Tenant's building access fob is used to access the building over 20 times a day, which they believe shows that the Tenant is conducting

illegal activities in the rental unit. The Landlord submitted a witness statement from the building manager into documentary evidence.

The Tenant testified that they are not doing anything illegal in the rental unit and that they have not damaged the property in any way. The Tenant also testified that they are not allowed to smoke on the rental property, so they go out several times a day to smoke off the property, and that is why there are so many fob accesses each day.

Analysis

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

I find that the Tenants received the Notice on September 29, 2018. Pursuant to section 47 of the *Act*, the Tenants had ten days to dispute the Notice. I find the Tenants had until October 9, 2020, to file their application to dispute the Notice. I have reviewed the Tenants' application and find that the Tenants filed their application on October 8, 2020, within the statutory time limit.

During the hearing, I heard contradictory testimony from both parties regarding the conduct of one of the Tenants and their guest on the rental property and the existence of illegal activity in the rental unit.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

After careful review of the Landlord's documentary evidence, I find that the Landlord has not provided sufficient documentary evidence to satisfy me, that the Tenant or their guest have engaged in illegal activities on the rental property or that they have put the Landlord's property at significant risk. Overall, I find there is an absence of physical evidence that would outweigh the contradictory verbal testimony of the parties, in this case. Therefore, I find the Landlord has failed to provide evidence sufficient to terminate the tenancy for any of three reasons given on the Notice he issued. Therefore, I grant the Tenant's application to cancel the Notice issued on September 29, 2020, and I find the Notice has no force or effect. The tenancy will continue until legally 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 Tenants were successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application. I grant permission to the Tenants to take a one-time deduction of \$100.00 from their next month's rent in satisfaction of this award.

As the Landlord has not been successful in their application, I find that they are not entitled to recover their filing fee for this hearing.

Conclusion

I grant the Tenant's application, and I find the Notice dated July 29, 2020, of no effect under the Act. 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: November 26, 2020

Residential Tenancy Branch