



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with The Tenant's Application for Dispute Resolution was made on November 6, 2020 (the "Tenant's Application"). The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the "*Act*"):

- an order to cancel a One Month Notice to End Tenancy for Cause dated November 1, 2020; and
- an order granting the recovery of the filing fee.

The Tenant, the Tenant's Advocate K.M., the Landlord, and the Landlord's Agents B.P., B.L., S.S. attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Tenant's hearing package and documentary evidence. As such, I find that the above mention documents were sufficiently served, pursuant to Section 71 of the *Act*. The Landlord stated that they did not provide any documentary evidence in preparation for the hearing.

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 is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the One Month Notice, is the Landlord entitled to an order of possession, pursuant to Section 47, 55 of the *Act*?

Background and Evidence

The parties were unaware as to the start date of the tenancy, although the Tenant stated that he has resided in the rental unit for about 10 years. The parties agreed that currently, the Tenant is required to pay rent in the amount of \$600.00 which is due on the first day of each month. The parties were uncertain as to the amount of security deposit paid by the Tenant at the start of the tenancy. The Landlord stated that she assumed ownership of the building recently and that the previous owner did not provide any details surrounding the tenancy. No written tenancy agreement was provided.

The Landlord testified that she served the Tenant with a One Month Notice on November 1, 2020, with an effective vacancy date of November 30, 2020, by posting it to the Tenant's door. The Tenant confirmed having received the One Month Notice on the same date. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Seriously jeopardised the health and safety or lawful right of another occupant or the landlord."

It was noted during the hearing that the Landlord's version of the One Month Notice served to the Tenant is from (2011/03). The One Month Notice used does not provide the details of cause. The Landlord stated that the One Month Notice was served to the Tenant in relation to concerns regarding the Tenant turning his door handle excessively which disrupts other occupants, the smell emitting from the Tenant's suite, hoarding, uninsured vehicle, and concerns about mold and bed bugs in the rental unit. The Landlord stated that the Tenant has been cautioned about these concerns, however, the Landlord provided no evidence in support.

The Tenant's Advocate responded and stated that the Tenant has concerns regarding a recent theft from his rental unit, therefore, checks his door to ensure it is locked. The Tenant's Advocate further stated that the Tenant has in no way seriously jeopardised the health and safety or lawful right of another occupant or the landlord.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on November 1, 2020 with an effective vacancy date of November 30, 2020 by posting it to the Tenant's door. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I note that Section 55 of the Act states that in order for a Landlord to be granted an order of possession, the Landlord's notice to end tenancy must comply with Section 52 of the Act relating to form and content.

Section 52 of the Act States; In order to be effective, a notice to end a tenancy must be in writing and must;

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy,***
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) **when given by a landlord, be in the approved form.***

I find that the Landlord served the Tenant with a One Month Notice that is outdated (2011/03), therefore is not the approved form. Furthermore, the One Month Notice

served to the Tenants does not contain the “Details of Cause” section which provides the Landlord an opportunity to outline the details surrounding the reason for Cause. This also provides the Tenant with an understanding as to why they are being served a Notice to End Tenancy. In this case, I find that the Landlord has not provided any information which would support the One Month Notice being served.

I find the One Month Notice does not comply with Section 52 of the *Act*. In light of the above, I cancel the One Month Notice, dated November 1, 2020. I order that the tenancy continue until ended in accordance with the *Act*.

As the Tenant was successful with their Application, I find that they are entitled to the return of the \$100.00 filing fee, which I order the Tenant to deduct from one (1) future rent payment.

Conclusion

The One Month Notice issued by the Landlord dated November 1, 2020 is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

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: January 29, 2021

Residential Tenancy Branch