



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant and his agent, K.W. attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend.

The tenant stated that the landlord was served with the notice of hearing package and a copy of the 1 month notice and the attached 2 page statements via Canada Post Registered Mail on December 10, 2020. The landlord also submitted a copy of the Canada Post Customer Receipt Tracking Receipt and label as confirmation of service. I accept the undisputed affirmed evidence of the tenant and find that the landlord was properly served as per sections 88 and 89 of the Act.

This hearing was scheduled to begin at 9:30am on this date. I waited until 7 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that I was the only person who had called into this teleconference.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

During the hearing the tenant stated that the second request for the landlord to comply was made in error and is withdrawn. As such, no further action is required this portion of the application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Is the tenant entitled to an order for the landlord to comply?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant confirmed he was served with the 1 month notice dated November 28, 2020 by having it posted to the rental unit door which he received on November 30, 2020.

The tenant provided the details of the notice which states:

The 1 Month Notice sets out an effective end of tenancy date of January 31, 2021 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The details of cause state:

See attached statements, pages 1 and 2.

The tenant provided written details which state,

The Landlords Son and Daughter inlaw, whom live next door come over to upstairs suite for Jam sessions, drum and electric guitar which are plugged into an amplifier. This violates my right to quiet enjoyment. This has happened several times which has caused me to loose my temper. I would like to be able to have a mutual understanding and agreement for when these Jam sessions can happen. The house is old and there is very little insulation between floors there for the noise is unbearable.

[reproduced as written]

Accordingly, after waiting until 17 minutes past the start of the scheduled hearing time and in the absence of any evidence or submissions from the landlord and in the absence of landlord's participation in this hearing, I order the application filed by the tenant granted. The 1 month notice dated November 28, 2020 is cancelled and the tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I order that the tenant may withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application to cancel the 1 month notice is granted. The tenancy shall continue.

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: February 26, 2021