



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RR, PSF, LRE, OLC, LAT

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated November 7, 2020.

He also seeks:

- a significant monetary award to recoup the cost of utilities paid by him but used by other occupants on the premises and damages for water and power disruptions and noise,
- A rent reduction due to reduced laundry room service,
- An order that the landlord restore laundry room service,
- A restriction on the landlord's right of entry,
- An compliance order regarding laundry, utilities, power and water disruption and noise,
- Permission to change the locks to the rental unit.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The landlord's assistant IM indicated the landlord had only just received the tenant's application. YB for the tenant showed that the landlord had been served with the application by registered mail (Canada Post tracking number shown on cover page of this decision) addressed to the address the landlord had provided for himself in the one month Notice, the address of this rental unit. Canada Post records show the package

was mailed November 18, 2020, that a card was left at the address indicating where the package could be retrieved and that the package was ultimately returned as “unclaimed by recipient.” IM indicated the landlord does not live at that address and, later, indicated the landlord does not live in the province. He offered no explanation for why the landlord would provide the rental premises as an address for himself. The tenant has claimed that the landlord has never provided a proper address at which to be contacted.

At hearing it was ruled that the landlord had been duly served with the tenant’s application in accordance with ss. 89 and 90 of the *Residential Tenancy Act* (the *RTA*).

The hearing of this matter has been given a priority status as it deals with the effect of a Notice to End Tenancy. Rule 2.3 of the Rules of Procedure states that 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 determined that the tenant’s claims other than the application to cancel the Notice were unrelated to that primary claim. They are dismissed with leave to re-apply. It was noted that, in any event, the time provided for this hearing was not adequate to deal with those claims, the matter would undoubtedly have been adjourned and that the tenant’s unrelated claims may well receive an earlier hearing if he simply re-applied.

The tenant reported that his heat had been shut off or was not working. It was agreed that if time permitted, I would address this issue between the parties. Time did permit and so the matter was dealt with.

Issue(s) to be Decided

Has the tenant given cause to end the tenancy as alleged in the Notice?

Background and Evidence

The rental unit is composed of the main and upper floor of a conventional house. There is a suite in the basement that the landlord rents to others. The tenancy started in October 2019. The current monthly rent is \$2000.00, due on the first of each month. The landlord holds a \$1000.00 security deposit.

Since the start of the tenancy the landlord appears to have converted the garage into a third rental unit.

The tenant says the Notice was served on him by email attachment, not an approved method of service under s. 88 of the *RTA*. IM for the landlord says a copy was also attached to a door to the premises the next day, November 8.

The Notice alleges:

- The tenant has an unreasonable number of occupants in the rental unit,
- The tenant or a person permitted on the premises by him has seriously jeopardized the health or safety or lawful right or interest of another occupant or the landlord or has put the landlord's property at significant risk,
- The tenant or a person permitted on the premises by him has engaged in illegal activity that has damaged the landlord's property or adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord,
- The tenant or a person permitted on the premises by him has caused extraordinary damage,
- The tenant has not done required repairs of damage,
- The rental unit must be vacated to comply with a government order, and,
- The rental unit has been assigned or sublet without the landlord's written consent.

Proof of any of these grounds serves as lawful cause for ending a tenancy under s. 47 of the *RTA*.

The mandatory Notice form includes an area marked "Details of Cause" with a direction to "Describe what, where and who caused the issue and include dates/times, names, etc. This information is required. An arbitrator may cancel the notice if details are not provided. The Details of Cause area was blank in this Notice, nor were any details appended in an accompanying document.

In light of the lack of Details of Cause, it was not necessary to continue to hear evidence about any of the grounds for the Notice.

Analysis

The Notice

The landlord failed to include any details of any of the various causes alleged to justify ending this tenancy. A tenant receiving such a notice is left without a firm basis to respond or to decide whether just cause exists.

I find that the landlord's failure to provide any details of the causes listed in the Notice is fatal to its validity and I hereby cancel the Notice, without determination of the validity of any of the grounds.

In these circumstances no inquiry is necessary about the means of service of the Notice.

Heating

As an urgent matter the tenant noted that his electric heat was not working and, in his view, had been recently shut off purposely by the landlord. IM indicated that the tenant had not paid his rent. The parties were informed that the provision of heat by a landlord is not dependent on the payment of rent but on the fact of a tenancy. IM for the landlord made an attempt during the hearing to contact the occupants living in the garage area where he says the electrical panel is located, to direct them to check or flip the electrical breaker for the tenant's heat. That effort proved fruitless. IM indicated that the garage tenants return home from work about 5:00 o'clock p.m. today. At hearing I directed that if the tenant's heat is not restored by 5:30 o'clock p.m. today, the tenant is authorized to retain a qualified electrician or qualified home heating workman to attend at the property and correct the matter. If it becomes necessary, if entry by that electrician or home heating worker is denied by any tenant on the property, the landlord is required to authorize such entry as an emergency entry. The tenant is entitled to recover the cost of any such electrician or home heating workman from the landlord.

Conclusion

The tenant's application to cancel the one month Notice to End Tenancy dated November 7, 2020 is allowed. The remainder of his claim is dismissed with leave to re-apply.

A special directive regarding heat to the rental unit has been made on the terms outlined above.

I grant the tenant recovery of the \$100.00 filing fee and I authorize him to reduce his next rent by \$100.00 in full satisfaction of the fee.

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 01, 2021

Residential Tenancy Branch