



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT (Tenant)
 MNDCL, OPC, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed the application February 22, 2021 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated February 12, 2021 (the “Notice”)
- To recover the filing fee

The Landlord filed the application March 03, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- For an Order of Possession based on the Notice
- To recover the filing fee

The Tenant appeared at the hearing with S.S. to assist. The Landlord and Landlord’s Agent appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlord confirmed receipt of the hearing package and evidence for the Tenant's Application.

The Tenant confirmed receipt of the hearing package for the Landlord's Application. The Tenant testified that they did not receive the Landlord's evidence. The only evidence at issue were emails between the Landlord and City, an email from M.H. and a June 30, 2020 letter from J.G. The Landlord's Agent testified that they think they served this evidence on the Tenant by email, text message or posting it to the door of the rental unit; however, there was no documentary evidence submitted to support this.

Pursuant to rules 3.14 and 3.15 of the Rules, the Landlord was required to serve their evidence on the Tenant. Pursuant to rules 3.5 and 3.16 of the Rules, the Landlord had the onus to prove service of their evidence. Given the conflicting testimony about service of the Landlord's evidence, and lack of documentary evidence to support the testimony of the Landlord's Agent, I was not satisfied the evidence at issue was served on the Tenant. Therefore, I asked the parties for submissions on whether the evidence at issue should be admitted or excluded pursuant to rule 3.17 of the Rules. The Tenant submitted that it would be unfair for the evidence to be admitted when they have not seen it. The Landlord submitted that the evidence is crucial but that the matter should proceed in accordance with the legal aspect.

Pursuant to rule 3.17 of the Rules, I excluded the evidence at issue because I found it would be unfair to consider it when the Tenant had not seen it and could not respond to it at the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?
4. Is the Landlord entitled to compensation for monetary loss or other money owed?

5. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed there is a written tenancy agreement in this matter. The Tenant testified that the tenancy started January 01, 2014. The Landlord's Agent testified that the tenancy started in 2014 or 2015. The parties agreed the tenancy is currently a month-to-month tenancy. The parties agreed rent is \$1,466 per month due on the first day of each month.

The Notice was submitted. The Notice does not have an effective date. The parties agreed there was no effective date on the Notice issued to the Tenant.

The Landlord sought \$500.00 in compensation for a violation ticket issued by the City due to the rental unit being used for short term rentals without a valid business licence in contravention of the City's by-law. The Landlord testified that they paid the fine immediately so that it did not increase to \$1,000.00. The Landlord testified that they paid the ticket without talking to the Tenant about it.

I asked the Landlord what breach of the *Act*, tenancy agreement or *Residential Tenancy Regulation* the Landlord was relying on. The Landlord's Agent testified as follows. The evidence from the City proves that the Tenant previously used the rental unit for short term rentals. The Tenant has been asked repeatedly not to do short term rentals.

The Tenant disputed that they should be responsible for paying the Landlord for the violation ticket. The main issue raised by the Tenant was that the Landlord did not advise the Tenant of the ticket before paying it and the Tenant could have disputed the ticket if they had been advised of it. The Tenant testified that they were previously allowed to do short term rentals and that at some point the Landlord's Agent told the Tenant they should not be doing short term rentals. The Tenant testified that they have not been using the rental unit for short term rentals. The Tenant acknowledged that the violation ticket was issued because of a short term rental listing they put online. The Tenant testified that they did not know that just having a listing for short term rentals was no longer allowed.

In reply, the Landlord testified that, by the time they received the ticket, they only had one day to pay the ticket before the cost increased to \$1,000.00.

Analysis

The Notice was issued pursuant to section 47 of the *Act*. Pursuant to section 47(3) of the *Act*, the Notice must comply with section 52 of the *Act*.

Section 52 of the *Act* states:

52 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...
- (e) when given by a landlord, be in the approved form.

(emphasis added)

The Notice does not state the effective date and therefore does not comply with section 52 or section 47(3) of the *Act*. Given this, the Notice is not a valid notice to end tenancy and is cancelled. The tenancy will continue until ended in accordance with the *Act*.

In relation to the compensation sought, section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I am satisfied based on the text messages submitted by the Tenant from June of 2019 that the parties agreed the Tenant would not use the rental unit for short term rentals.

I am satisfied based on the Order from the City that the City issued the violation ticket based on a short term rental listing which was attached to the Order. I understood the Tenant to acknowledge that they put the listing online.

I am satisfied based on the email from the City dated March 09, 2021 submitted by the Tenant, the Tenant's testimony and the Tenant's written submissions that having the short term rental listing online contravened the City's bylaw and resulted in the violation ticket being issued. The Tenant said they did not know that having the short term rental listing online contravened the City's bylaw; however, not knowing applicable laws does not relieve the Tenant of their obligation to comply with them or of the consequences for not complying with them.

I am satisfied the Tenant breached the agreement between the parties that the rental unit could not be used for short term rentals by continuing to advertise the rental unit in a manner that contravened the bylaws relating to short term rentals.

I am satisfied the Landlord paid the \$500.00 violation ticket as the parties agreed on this. Given this, I am satisfied the Landlord lost \$500.00 due to the Tenant's breach.

I am not satisfied the Landlord mitigated their loss as I am satisfied the Landlord did not talk to the Tenant about the ticket prior to paying it. I acknowledge that the Landlord

stated that they only had one day to pay the ticket before the cost increased; however, I do not find that this justifies not reaching out to the Tenant to discuss the ticket prior to paying it. I am satisfied the Tenant should have been given an opportunity to dispute the ticket and that the Tenant did not have this opportunity because the Landlord did not reach out to the Tenant prior to paying the ticket.

In the circumstances, I am satisfied the Landlord is entitled to \$250.00 in compensation for half of the cost of the violation ticket. I find this balances the fact that the ticket was issued due to the Tenant's actions and the fact that the Landlord took away the Tenant's opportunity to dispute the ticket.

Each party can bear the cost of their own filing fee given each party was partially successful in the Application.

The Landlord is issued a Monetary Order for \$250.00 pursuant to section 67 of the *Act*.

Conclusion

The Notice is cancelled, and the tenancy will continue until ended in accordance with the *Act*.

The Landlord is entitled to \$250.00 in compensation and is issued a Monetary Order for this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 27, 2021

Residential Tenancy Branch