



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 29, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a One Month Notice to End Tenancy dated January 27, 2021 ("the One Month Notice"); and
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. The Landlord confirmed that she received the Tenant's Application and documentary evidence. The Tenant stated that she received the Landlord's documentary evidence by email, however, some of the evidence was difficult to view and was unorganized. Regardless, the Tenant stated that she received the documents and was prepared to proceed with the hearing regardless. As such, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 of 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.

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*.

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 71 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 13, 2013. Currently, the Tenant is required to pay rent in the amount of \$1,105.44 on the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The Landlord stated she served the Tenant in person with the One Month Notice on January 27, 2021 with an effective vacancy date of March 1, 2021. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice are;

"The Tenant or a person permitted on the property by the Tenant has put the landlord's property at significant risk, damaged the landlord's property, caused extraordinary damage to the property, breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The Landlord stated that she attended the rental unit on December 14, 2020 to discover that the Tenant had a large amount of garbage left out in the yard at the rental property. The Landlord stated that she provided the Tenant with a notice requesting that the Tenant clean up the yard of all the debris. The Landlord stated that she gave the Tenant 11 days to comply with her request.

The Landlord stated that she returned to the rental property on December 28, 2020 at which point she discovered that the Tenant had done some cleaning, however, the Landlord stated that many of the items had only been relocated to a shed and also hidden in the bushes. The Landlord stated that she once again cautioned the Tenant to perform further cleaning of the rental property and to remove the garbage. The Landlord

also stated that some of the trees in the yard had been delimbed and that a fence had been removed. The Landlord submitted photographic evidence in support.

The Tenant responded by stating that she did have a large number of items left out in the yard which was unsightly. The Tenant stated that she has been at the rental unit for 8 years and intended on cleaning up the yard in the new year once the weather improved. The Tenant stated that after she received the caution notice from the Landlord, she began to clean the yard and took 6 truck loads to the dump. The Tenant stated that she does not have a truck or the finances to hire someone to remove the garbage, therefore, she was relying on friends to assist when they were available.

The Tenant stated that she should be permitted to store what she wants in the shed and that the rental property, aside from some yard waste, has been cleaned. The Tenant provided photographic evidence in support. The Tenant is wishing to continue the tenancy and has therefore applied to cancel the One Month Notice. If successful, the Tenant is also seeking to recover the filing fee paid to make the Application.

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 in person with a One Month Notice to End Tenancy for Cause dated on January 27, 2021 with an effective vacancy date of March 1, 2021. 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.

The Landlord is seeking to end the tenancy on the basis that the Tenant or a person permitted on the property by the Tenant has put the landlord's property at significant risk, damaged the landlord's property, caused extraordinary damage to the property, breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord's main concerns relate to the large amount of garbage left out in the yard at the rental property by the Tenant, the delimbing of trees and the removal of a fence. I

accept that the Tenant as of December 14, 2020 did not maintain the rental property in a state of reasonable cleanliness. I accept that the Landlord provided written caution notices and a subsequent One Month Notice to the Tenant in an attempt to have the Tenant comply with this standard.

According to the Residential Tenancy Policy Guideline 1; The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

I find that since receiving the caution notices and One Month Notice, the Tenant cleaned the rental property to a state that comes closer in line with what can be considered reasonably clean. While it may be that the Tenant has more work to do to ensure the rental property is considered clean, I don't find that the current state of the rental property merits this tenancy ending. As such, I cancel the One Month Notice dated January 27, 2021. I order the tenancy continue until it is ended in accordance with the Act.

Nevertheless, the Tenant is now warned that they must maintain the rental unit and property to "reasonable health, cleanliness and sanitary standards". Increased incidents of this type or any further escalation, may give the Landlord sufficient cause to end the tenancy.

I find that even though the Tenant was successful with their Application to cancel the One Month Notice, I find that they had breached Section 1 of the Act. I find that it was necessary for the Landlord to serve the One Month Notice, for the Tenant to take steps at cleaning the rental property. As such, I find that the Tenant is not entitled to the recovery of the filing fee.

The Landlord is at liberty to apply for monetary compensation for damage or loss should they feel entitled to.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated January 27, 2021 is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: April 30, 2021

Residential Tenancy Branch