



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, LAT, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- authorization to change the locks to the rental unit; and
- recovery of the filing fee.

The tenant and the landlord's agents (landlords) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Recording of the hearing –

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Evidence issues –

The landlord confirmed receiving the tenant's evidence; however, the tenant said he received the landlord's evidence too close to the hearing.

The landlord submitted proof that their evidence was sent by registered mail on April 26th.

The tenant said he received the landlord's evidence on May 4th for the hearing on May 10th. Further, the tenant said he did not have time to look at the evidence. In response to my inquiry, the tenant said he had not started to formulate a response to the landlord's evidence.

I find the landlord's evidence was sent to the tenant in accordance with the required timeline under the Act and I therefore have accepted all of the landlord's evidence for consideration.

Severing unrelated issues –

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the One Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the One Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice and to recovery of the filing fee?

Background and Evidence

The undisputed evidence is that the tenancy started on December 1, 2019, monthly rent began at \$1,250, and the tenant paid a security deposit of \$625.

The One Month Notice to End Tenancy for Cause, which is the subject of this application, was dated January 26, 2021, for an effective move out date of February 28, 2021. The Notice was posted on the tenant's door and was collected by the tenant on January 26, 2021.

The causes listed on the Notice, submitted into evidence by the tenant, alleged that the tenants or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant and that the tenant has caused extraordinary damage to the rental unit.

The Notice was on a form no longer in use by the Residential Tenancy Branch (RTB).

Pursuant to Rule 6.6 and 7.18, the landlords proceeded first in the hearing to support the Notice.

To support their Notice, the landlord's agents said that the tenant is smoking cigarettes and marijuana in the rental unit, which is illegal and in violation of the no-smoking clause in the addendum to the written tenancy agreement.

When asked, the landlord submitted that the smoking would be in violation of a local by-law.

As to the extraordinary damage listed on the Notice, the landlord submitted due to the tenant's smoking, the owner will have to repaint and replace the carpet before a new tenant could move in. Additionally, the tenant signed an addendum prohibiting him from smoking in or on the premises.

The agents referred to their documentary evidence, which included text messages from the tenant to the landlord and written complaints.

Tenant's response –

The tenant said he has been in the rental unit for two years without issue and has never heard anything about these allegations from other tenants prior to this dispute.

The tenant submitted that he no longer smokes at all and has not caused extraordinary damage to the rental unit, due to his lack of smoking.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Section 47 of the Act provides that a landlord may end a tenancy if they have sufficient cause for so doing.

When a landlord seeks to end a tenancy for any of the reasons listed in this section of the Act, the landlord is required to serve a notice which complies with section 52 as to form and content of the notice to end the tenancy.

Section 52 requires the following:

Form and content of notice to end tenancy

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,**
 - (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.**

[My emphasis added]

In the matter before me, I find the landlord's Notice was not in the approved form. The Notice used by the landlord is not in use by the Residential Tenancy Branch (RTB) now and the landlord used an out-of-date form. The current form requires the landlord 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 current form includes a separate space for writing the required details as noted above.

In this case, I find the Notice does not state the entire grounds for ending the tenancy. Even though the landlord indicated the "tenants or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant and that the tenant has caused extraordinary damage to the rental unit" as the causes, the landlord neglected to fill out the "Details of Cause(s)" portion which would set out the required information so that the tenant would be aware what the full details of the cause are when applying to dispute the One Month Notice and to be able to provide rebuttal evidence, if any.

Tenancy Policy Guideline 18 states that an arbitrator may not amend a form which does not contain the required information.

Therefore, I find the One Month Notice is not valid as it is missing the necessary and required information. The Act requires that notices to end tenancy issued by the landlord be in the approved form due to the fact that the approved forms contain all of the required information a tenant would require to dispute the notice if necessary.

As a result of the above, the One Month Notice in this matter is **cancelled** and is of **no force or effect**. The landlord is also reminded to complete all notices as required by section 52 of the Act in the future.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

I find it important to note that I would still have made the decision to cancel the Notice, as the landlord alleged that the tenant engaged in illegal activities, but did not present proof that the activity was a serious violation of federal, provincial, or municipal law.

Additionally, although the landlord alleged the tenant caused extraordinary damage to the rental unit, I find the landlord submitted insufficient evidence of extraordinary damage. A future replacement of carpet and repainting does not demonstrate current extraordinary damage.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee under section 72 of the Act in the amount of **\$100**. Pursuant to sections 67 and 72 of the Act, I grant the tenant a one-time rent reduction of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Cautions to the tenant –

I have reviewed the text message evidence sent by the landlord, which showed communication between the landlord's agent, WP, and the tenant. I find such messages as "I will have your head on a pole" and "walk in my place again and I wont threaten you I will throw your dumbass out loser" could be construed as threats against the landlord.

I caution the tenant that if these types of messages continue, the landlord may seek to end your tenancy earlier than it would if you were served another Notice to end the tenancy.

I further caution the tenant that he should comply with the terms of the written tenancy agreement, which includes an addendum.

Conclusion

The tenant's application is successful. The One Month Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act. The tenant has been granted a one-time rent reduction of \$100 from a future month's rent in full satisfaction of the recovery of the cost of the filing 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: May 12, 2021