



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed the following claims:

- to cancel a One Month Notice to End Tenancy for Cause dated March 22, 2021 ("One Month Notice");
- to cancel the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice");
- for a Monetary Order for damage or compensation under the Act of \$5,000.00;
- for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided of \$400.00;
- for a Monetary Order for the cost of emergency repairs;
- to Suspend or Restrict the Landlord's right to enter; and
- for an Order for repairs to the unit, site, or property, having contacted the Landlord in writing to make repairs, but they have not been completed.

The Landlord filed the following claims:

- for an Order of Possession for Cause, based on the One Month Notice;
- a Monetary Order of \$420.00 for damage or compensation for damage under the Act, retaining the security deposit for this claim; and
- for Recovery of the \$100.00 application filing fee.

The Tenant and an agent for the Landlord, S.J. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, both Parties indicated varied matters of dispute on their applications, the most urgent of which are the applications regarding whether the tenancy will continue or not – the validity of the One Month Notice. I found that not all the claims on the applications are sufficiently related to be determined during this proceeding. I said I would, therefore, only consider the Tenant's request to set aside the One Month Notice and the Landlord's request for an Order of Possession for Cause, based on the Month Notice, and the recovery of the Landlord's filing fee at this proceeding. Therefore, the Parties' other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Neither Party submitted a copy of the 10 Day Notice; therefore, I find there is insufficient evidence before me of the validity of the 10 Day Notice, and so, it is cancelled and is of no force or effect.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and dismissed, and I am satisfied that the eviction notice complies with section 52 of the Act, I must grant the landlord an order of possession.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, I find that the Landlord has the burden of proof in this proceeding.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recovery of his \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on December 1, 2020, and is scheduled to run to November 30, 2021. They agreed that the Tenant pays the Landlord a monthly rent of \$1,390.00, due on the first day of each month, and that the Tenant paid the Landlord a security deposit of \$695.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the Tenant's security deposit in full.

The Agent served the Tenant with a One Month Notice that was signed and dated March 22, 2021, and which has the rental unit address. The Agent said in the hearing that the One Month Notice was served via registered mail on April 2, 2021, and that it has an effective vacancy date of April 30, 2021, which is automatically corrected by section 53 the Act to May 31, 2021. The grounds set out on the One Month Notice for the eviction were that the Tenant allowed an unreasonable number of occupants in the unit/property; and that the Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property.

As noted above, even though the Tenant applied to cancel the One Month Notice, the burden of proof in this situation is on the Landlord to establish why the tenancy should end and that the One Month Notice is valid and enforceable.

In the hearing, the Agent said

When the Tenant moved in in the winter, the owner spent a lot of money to update the whole suite. After the tenant moved in, I'm very, very surprised that he is complaining about the mice issue. I hired pest control to make the Tenant happy.

But there's another occupant. Mice like the food. We need approval before another occupant is allowed in. See addendum page one of the tenancy agreement – see page 7 of tenancy agreement in clause 6 of the Addendum.

Clause six of the Addendum states:

6. Additional Occupants

In the event the Tenant anticipates [sic] an additional person to occupy the rental unit, he/she shall promptly apply in writing for permission from the Landlord or Agent for such person to become a permanent occupant. Failure to apply and obtain the approval of the Landlord or Agent in writing is considered a fundamental breach of this agreement. The Landlord has the right to terminate this tenancy immediately, if the Tenant rejects to correct this said breach right away.

In answer to the question about the right of the Tenant to have visitors, the Agent said;

A few days, that's okay, and depends on how they occupy. I am very surprised that the mice – we never had the mice issue in the building before. Previous tenants lived there for five years and never had a mice issue. The issue was caused by the tenant and additional occupant leaving food around and that attracts mice. I take a picture and it is before you.

And secondly, I like to patch the hole and still they complain, and we had the pest control who said to move the dishwasher, and nothing behind the dishwasher. The holes were behind the stove, but not behind the dishwasher.

I was not able to find a photograph that the Agent said he submitted.

The Tenant said:

My brother is a type one diabetic. He was here for a little bit of time to be safe. So, what happened here and every single time the rodent people came.... I don't know where [the Agent] is from, but he's lying to you. They never moved ... the appliances that's why I'm mad at them. They didn't move the dishwasher; they found a hole behind the stove. They never moved the dishwasher; they never moved the fridge; and I still have rat traps....

My brother never moved in here permanently. He can't prove that my brother. . .he's just making numbers up – no list of days. He's never permanent; he's a type-1 diabetic and I tried helping him. He was here making sure . . .

[The Agent] brought some cool Asian pest control guy, and he came one time and you have to tell them to move all the warm appliances. I told the people that

[the Agent] hired. They don't move anything – they come in here with a caulking gun and are looking for holes to plug. [My brother's] long gone and he had his own lease.

This gentleman just lied to you. If he did a legitimate job and they fixed the problem..., but they did half-ass work, Miss. Super half-ass work. I have a nice lady who is across the way. She said they have a mice problem. This whole building is filled with mice. He's openly lying to you.

The Agent said: "I want to say that my point is that the extra occupant should get approved. Extra occupant wasn't temporary – it was four months."

In answer to how he knew how long the brother was living there, the Agent said: "This is a one-bedroom suite, but an extra bed was there for a long time. I just observed the unit. I'm the property manager of this suite only."

The Agent acknowledged that he did not tell the Tenant that this was unacceptable to the Landlord. Rather, the Agent relied on the Addendum to the tenancy agreement, which is not filled out.

Section five of the Addendum states:

5. Number of occupants

The tenant agrees that the rental unit shall be occupied by no more than number of persons disclosed as following, consisting of _____ adults and _____ children under the age of 18 years old, without the written consent of the Landlord or Agent.

Name	Age	Name	Age
_____		_____	
_____		_____	
_____		_____	

This was reproduced as written in the Addendum – none of the blanks were filled out.

I asked the Agent what extraordinary damage the Tenant had caused, and the Agent said: "Because the suite was renovated newly, but it looks very messy and is unacceptable. Physical damage inside suite. Explosion. He writes google reviews and

asking for money.”

The Agent then said the eviction notice was served solely because the Agent said there was an additional occupant. The Agent said: “It’s just for the additional occupant and nothing else that he is being evicted.”

The Tenant said: “My brother is not even here. He has a lease at [brother’s address]. He didn’t even live here.”

Analysis

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

The Act does not define “occupant”. However, the *Residential Tenancy Act* Regulation states at section 9:

Occupants and guests

9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1) Despite subsection (2) of this section but subject to section 27 of the Act *[terminating or restricting services or facilities]*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

I find that the Agent did not provide sufficient evidence of his having discussed the issue with the Tenant. Further, the “occupant” in question, which is still a question, is no longer in the rental unit. In addition, I find that the Agent did not have a reliable method of determining how long the Tenant’s brother was staying in the rental unit. As such, I

find it is not clear whether the Tenant's brother stayed there an unreasonable amount of time or not.

In addition, the Agent suggested that the presence of the Tenant's brother caused the mouse problem at the residential property. The Agent suggested that because another person stayed in the rental unit that this would lead to more food being left around, which attracts mice. I find this is speculation and not based on evidence before me.

The Agent withdrew his claim that the One Month Notice was served, because the Tenant caused extraordinary damage to the residential property.

I find there is insufficient evidence before me that the Tenant allowed an unreasonable number of occupants in the unit/property; therefore, I find the One Month Notice is not valid or enforceable, and I cancel it. The Landlord's application is dismissed wholly for insufficient evidence. The Tenant's application to cancel the One Month Notice is successful.

Conclusion

The Tenant is successful in his application to cancel the One Month Notice, as the Landlord provided insufficient evidence of grounds for the eviction notice. The One Month Notice is cancelled and is of no force or effect. The Landlord's application is dismissed wholly without leave to reapply. The Tenant's other claims are dismissed with leave to reapply. The tenancy will continue until ended in compliance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 03, 2021

Residential Tenancy Branch