



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, CNC, AAT, RP, PSF, MNDCT, OLC, AS, FFT

Introduction

On March 5, 2021, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month to End Tenancy for Cause (the “Notice”) issued on February 28, 2021, for a rent reduction for repairs, services or facilities agreed upon but not provided, for an order to allow access to the unit or site for me and/or my guests, for an order that regular repairs be made to the unit, site or property, for an order that the Landlord provide services or facilities required by the tenancy agreement or law, for a monetary order for compensation for my monetary loss or other money owed, for an order that the Landlord to comply with the Act, regulation and/or the tenancy agreement, for an order to be allowed to assign or sublet the rental unit, and to recover the filing fee for this application. The matter was set for a conference call.

The Tenant, the Tenant’s Advocate (the “Tenant”) and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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.

Preliminary Matters

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as several other issues. I find that these other issues are not related to the Tenant's request to cancel the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

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 explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claim for a rent reduction for repairs, services or facilities agreed upon but not provided, for an order to allow access to the unit or site for me and/or my guests, for an order that regular repairs be made to the unit, site or property, for an order that the Landlord provide services or facilities required by the tenancy agreement or law, for a monetary order for compensation for my monetary loss or other money owed, for an order that the Landlord to comply with the Act, regulation and/or the tenancy agreement, and for an order to be allowed to assign or sublet the rental unit.

I will proceed with this hearing on the Tenant's claim to cancel the Notice and recover the filing fee.

Issues to be Decided

- Should the Notice issued on February 28, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of the filing fee of their application?

Background and Evidence

The tenancy agreement recorded that this tenancy began on November 1, 2020, that rent in the amount of \$1,150.00 is due on the first day of each month, and that the Landlord collected a were holding a \$575.00 security deposit for this tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on February 28, 2021, by personal service. Both the Landlord and the Tenant provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- *Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.*
- *The Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

The Landlord testified that the Tenant had moved another person into the rental unit without their consent. The Landlord testified that this other person is receiving mail at the rental property and had been living there for a few months.

The Tenant testified that they suffered an accident in early 2021, and that their boyfriend was initially staying with them a few days a week in order to help them, but that it was not until March 15, 2021, that their boyfriend officially gave up their own place and started living with them full time in the rental unit. The Tenant also testified that they rent a two-bedroom unit and that two people living there is reasonable.

The Landlord testified that they had no documentary evidence to support their claim that the Tenant's boyfriend had moved in before they issued the Notice to end tenancy.

The Landlord testified that they had misunderstood the wording of the second reason they checked off on the Notice and withdrew that section of their Notice during these proceedings.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy on February 28, 2021, and that pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. Accordingly, the Tenant had until March 10, 2021, to file their application to dispute the Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on March 5, 2021, within the statutory time limit.

The Landlord indicated that they issued this Notice to end tenancy, as the Tenant had moved an unreasonable number of people into the rental unit.

I have reviewed the testimony in this case, and I find that the parties have offered conflicting verbal testimony regarding the date the Tenant moved their boyfriend into the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, it is the Landlord who holds the burden of proving their Notice.

After careful review of the Landlord's evidence, I find that there is insufficient evidence before me, to satisfy me, that this Tenant had moved an unreasonable number of people into the rental unit before this Notice was issued.

Additionally, I accept the testimony of the Landlord that they wish to withdraw the second reason indicated on their Notice to end this tenancy.

Overall, I find that the Landlord has not proven sufficient cause, to satisfy me, to terminate the tenancy for the reasons indicated on the Notice they issued. Therefore, I grant the Tenant's application to cancel the Notice issued on February 28, 2021, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is allowed to take a one-time deduction of \$100.00, from their next month's rent in satisfaction of this award.

Conclusion

The Tenant's application to cancel the Notice, issued on February 28, 2021, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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: June 14, 2021

Residential Tenancy Branch