



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, LRE, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlords with the notice of hearing package via Canada Post Registered Mail on January 6, 2021. Both parties confirmed the tenant served the landlord with the submitted documentary evidence in two packages via Canada Post Registered Mail on January 14, 2021 and again on March 10, 2021. Both parties confirmed the landlords served the tenant with their submitted documentary evidence in 4 packages each time in person on January 15, 2021, February 17, 2021, March 10, 2021 and March 13, 2021. Neither party raised any service issues. Both parties also confirmed the tenant served the landlords with the amendment to the application on January 14, 2021 via Canada Post Registered Mail. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act with the notice of hearing package and the submitted documentary evidence.

At the outset, the tenant's application was clarified. The tenant had requested an order for the landlord to comply, a monetary claim for compensation, an order to suspend or set conditions on the landlord's right to enter the rental unit. The tenant has stated that the order for the landlord to comply and the request to suspend or set conditions on the landlord's right to enter the rental unit can be severed as they are unrelated to the primary claim to cancel the 1 month notice. On this basis, pursuant to Rule 2.3 of the Rules of Procedure these two portions of the tenant's application are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The tenant stated that the monetary claim is linked to the 1 month notice and on this basis, the tenant wishes to continue with the monetary claim.

The hearing commenced regarding the tenant's request for an order cancelling the 1 month notice and recovery of the filing fee. The tenant's request regarding a monetary claim was reserved pending the tenant's monetary claim details.

Extensive discussions took place over 88 minutes before the hearing was adjourned due to a lack of time. Both parties confirmed their addresses as per the tenant's application for dispute. The landlord clarified that she would prefer the notice of adjournment details to be mailed to her PO Box as provided during the hearing. Both parties were cautioned that as the hearing has commenced that no new evidence is to be submitted nor would it be accepted.

On July 20, 2021 the hearing resumed with both parties present.

At the outset of the adjournment both parties were consulted regarding the tenant's second application for dispute which was cross referenced to this hearing (file number referenced on cover of this decision). In this application the tenant applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant confirmed that these issues were the same as those that were severed on March 29, 2021 as being unrelated with exception of an additional monetary claim issue.

Both parties were advised that this cross referenced file shall not be heard and referred back to the RTB to be rescheduled for a separate hearing as it was previously severed as per Rule 2.3 of the Rules of Procedure. Both parties were advised that the RTB will contact the tenant to facilitate the application rescheduling.

Discussions also took place in which the tenant's previous monetary claim was clarified. The tenant stated that the monetary compensation request was in direct response to the landlords' actions in serving the tenant with the notice to end tenancy and for the tenant's distress caused by the landlords' accusations of the tenant selling drugs from the rental property. The tenant stated that these accusations started prior to the landlord serving the notice to end tenancy on December 29, 2020. I find based upon the details provided by the tenant that this monetary claim for compensation is also unrelated to the notice to end tenancy dated December 29, 2020. As stated by the tenant, the request for compensation is based upon actions that took place before the notice was served. On this basis, this portion of the tenant's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?
Is the tenant entitled to recovery of the filing fee?

Background, Evidence, Analysis and Conclusion

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

On December 29, 2020, the landlord served the tenant with the 1 Month Notice dated December 29, 2020. The 1 Month Notice sets out an effective end of tenancy date of January 31, 2021 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

- put the landlord's property at significant risk; or
- 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 or the landlord.
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The details of cause state:

- (1) G.N. has been and continues to sell illegal substances on the property of...(last dated proof of illegal sale: December 26, 2020). Information from a witness has been provided indicating the exact whereabouts of where the illegal substances are stored in the home, who the illegal substances were and are being sold to and that the illegal substances have been sold for a minimum of three years out of the property. This witness has seen first-hand the illegal transactions taking place on countless occasions over the last three years; 2017 to 2020.
- (2) We have a text message conversation proving G.N.'s intent to sell illegal drugs. The conversation states the illegal drug for sale, the quantity and price of the drug for sale and instructions from G. to the buyer to pick up the illegal drugs at... This conversation shows the date and time along with G.'s phone number at the top of the conversation.
- (3) Myself and my partner are moving into the property and will be soon be bringing in a newborn, we feel this illegal activity happening in the home that it jeopardizes our quiet enjoyment, the safety, security and well-being of ourselves and our unborn child.

[reproduced as written]

The landlords claim that they believe the tenants are selling drugs on the property. The landlords referred to a roommate of the tenants of 3 ½ years provided text message to the landlord that the tenants are selling drugs. The landlords referred to a screenshot of a text message submitted in evidence that shows that the tenant "has scooby" which are dried mushrooms which are being sold for \$40. The landlord clarified that "scooby snacks" are magic mushrooms. The tenants dispute these claims.

The landlord's witness, B.S. confirmed in her direct testimony that she has lived as the tenants roommate for 3 years and saw the tenant, G.N. selling marijuana and mushrooms very frequently. The tenant disputed these claims. The landlord referred to audio clip 1 labelled as (F) which confirms that the tenant has weed and mushrooms on the property, but that the tenant states is for personal use. The landlord also referred to audio clip 2 labelled as (G) in which the tenant stated that she would help a friend. The tenant argues that the landlord has failed to provide the entire audio clips of

conversations as per Residential Tenancy Branch Policy Guideline #42, Digital Evidence. The tenant dispute that there are no “scooby snacks” and that she does not sell illegal mushrooms. The tenant argues that the landlord’s evidence is not reliable.

After 25 minutes of discussions during the adjourned hearing the landlords stated as they have now occupied part of the property, they see no issues regarding any illegal activity by the tenant. The landlord also stated during the hearing that they are withdrawing all 4 of the reasons for cause listed on the notice to end tenancy and wish to cancel the 1 month notice dated December 29, 2020. On this basis, the tenant has been successful in her application to dispute to cancel the 1 month notice dated December 29, 2020. As such, the tenant is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant’s application to cancel the 1 month notice dated December 29, 2020 is granted. The tenancy shall continue. As such, the tenant is authorized to withhold one-time \$100.00 from the next months rent due upon receipt of this decision for recovery 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: July 21, 2021

Residential Tenancy Branch