



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a One Month Notice to End Tenancy for Cause dated April 30, 2021 (1 Month Notice), to recover the cost of the filing fee and several unrelated items, which I will address further below.

The tenant, the landlord and an agent for the landlord, AJ (agent) attended the teleconference hearing and were affirmed. The parties confirmed that they had exchanged their documentary evidence, had the opportunity to review that evidence and were given the opportunity to ask questions. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant stated that they served their evidence by phone, which is not an approved method of service under the Act. As the agent stated that they only received the application and the Notice of Hearing but no documentary evidence, I have not considered the tenant's documentary evidence as it was not served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). As the tenant confirmed that they were served with the landlord's documentary evidence and that they had the opportunity to review that evidence, I find the tenant was sufficiently served in accordance with the Act and the Rules.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 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, the parties were informed that if any recording was surreptitiously

made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

Also, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Furthermore, Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on their application, the most urgent of which is the application to cancel the 1 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 application to cancel the 1 Month Notice and the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

Issues to be Decided

1. Should the 1 Month Notice be cancelled?
2. If yes, is the tenant entitled to the filing fee under the Act?
3. If no, is the landlord entitled to an Order of Possession?

Background and Evidence

A copy of the most recent tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2021 and is scheduled to revert to a month to month tenancy after July 31, 2021. Monthly rent of \$3,155.00 is due on the first day of each month. The tenant stated that they have been residing in the home for 14 years.

A copy of the 1 Month Notice was submitted in evidence. The tenant confirmed being served with the 1 Month Notice on April 30, 2021, which the same date the 1 Month Notice was dated. The tenant disputed the 1 Month Notice on May 3, 2021. The effective vacancy date is listed as May 31, 2021. In addition, the landlord confirmed that the rent cheque for July 2021 has not yet been cashed.

The 8 causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

2. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
3. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.
4. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
5. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or site.
6. Tenant has not done required repairs of damage to the unit or site.
7. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
8. Tenant has assigned or sublet the rental unit or site without landlord's written consent.

The "Details of Cause" section listed on the 1 Month Notice states as follows:

Inspection completed on March 31, 2021 revealed the following concerns, and not corrected by the tenant in provided time-frame, as detailed in written warning issued on April 09, 2021:
-additional occupants living in the home not authorized by landlord, no written consent requested by tenant, and still not vacated
-serious and permanent structural changes to the home: wall and door constructed in the basement, painted walls, landlord never notified, prior written consent for these changes never obtained by tenant
-illegal basement suite constructed with major appliances installed in the basement - fridge, stove, kettle, microwave, toaster oven;
-uninsured, broken down inoperative vehicle parked on the property and still not removed
-general cleanliness and reasonable repair of the property not maintained - mold and mildew in bathrooms not cleaned, floors, countertops, carpets, hoarding materials under the sundeck and around the property, hoarding materials in the home throughout rooms and hallways upstairs and downstairs

[Reproduced as written]

Regarding cause 7, breach of a material term of the tenancy agreement, that was not corrected within a reasonable time after written notice to do so, the landlord presented the signed tenancy agreement, which was dated and signed by both parties on January 31, 2021. Clause 9 of the tenancy agreement reads as follows:

9. **ADDITIONAL OCCUPANT** When a person who is not listed in paragraph 2 above, resides in the premises for a period of two weeks in any calendar year they shall be considered to be occupying the premises contrary to this Agreement and without right or permission of the Landlord. This person shall be considered as a trespasser. Where the tenant anticipates an additional person in the rental premises, they shall promptly apply in writing for permission from the Landlord for such person to become a permanent occupant. Failure to apply and obtain the necessary approval of the Landlord in writing is considered a fundamental breach of this Agreement. The Landlord may at his option give immediate notice to end the Agreement or may at his option give immediate notice to the tenant to correct the breach. The Landlord has the right to end the tenancy, if the Tenant fails to correct the said breach within 3 calendar days after having been given written notice by the Landlord.

The tenant admitted during the hearing that a person named AH (AH) has been residing in the rental unit for the past 8 years. The landlord stated that they were not aware that AH was residing in the rental unit and presented a video of the rental unit inspection on March 31, 2021, and during the video the tenant admits that there is someone residing

there and first states it was “a couple of months”, then the tenant changes his answer to a “couple of weeks” shortly thereafter in the video. The tenant in the video stated at one point that he did not advise the landlord of an additional occupant because he “did not want to bother” the landlord.

The landlord testified that he was not aware that AH was residing in the rental unit and in support of that, he issued a warning of breach of a material term dated April 9, 2021 (Warning Letter), which the tenant confirmed having received. The Warning Letter reads in part:

...Furthermore, I have always told you that you need my permission before accommodating additional occupants. Once again, you failed to advise me that you will have additional people living in the home, prior to taking this action.

...

I am giving you until April 30, 2021 to correct these breaches:

1. You are the only name on the title of the tenancy agreement. Additional occupants need to be vacated immediately...

The tenant claims that it was his mistake that he did not read the tenancy agreement thoroughly before it was signed. The tenant admitted that AH continues to reside in the rental unit as of the date of the hearing, July 2, 2021.

Analysis

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

When a landlord issues a notice under Section 47 of the Act, they bear the responsibility in providing sufficient evidence to support the issuance of that notice. I have considered the testimony, documentary evidence and digital evidence, and I am satisfied that the landlord has provided sufficient evidence to support that the tenant was warned in writing on April 9, 2021 that the occupant was not permitted in accordance with clause 9 of the tenancy agreement, which was signed by both parties on January 31, 2021. I also find that the tenant admitted that AH continues to reside in the rental unit and that clause 9 clearly indicates that a breach of clause 9 would be considered a fundamental breach and as a result, the tenant was given until April 30, 2021 to have AH vacate, which the tenant failed to do.

Therefore, I find the tenant breached clause 9 of the signed tenancy agreement and that clause 9 was a material term of the tenancy agreement. I also find that the landlord gave the tenant reasonable time and that even as of the date of the hearing, July 2, 2021, the tenant continues to have AH reside in the rental unit and stated they were paying \$535.00 in rent to the tenant. Given the above, I dismiss the tenant's application in full as I find the 1 Month Notice is valid.

I find it is not necessary to consider any of the other 7 causes as the 1 Month Notice is valid.

I find the tenancy ended on the effective date, which was May 31, 2021 at 1:00 p.m. Pursuant to section 55 of the Act, I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act and therefore, I must grant the landlord an order of possession. As the rent cheque for July 2021 has not yet been cashed by the landlord, I grant the order of possession effective **two (2) days** from service on the tenant.

As the tenant's application fails, I do not grant the filing fee.

I caution the tenant not to breach a material term of any tenancy agreement in the future.

Conclusion

The tenant's application is dismissed without leave to reapply.

The 1 Month Notice is valid and is upheld. The tenancy ended on May 31, 2021 at 1:00 p.m. The landlord is granted an order of possession effective two (2) days after service on the tenant and which must be served on the tenant. Should the landlord require enforcement of the order of possession, the landlord may apply in the Supreme Court.

The tenant should be aware that if the tenant does not comply with the order of possession, the tenant may be responsible for all enforcement costs.

This decision will be emailed to both parties.

The order of possession will be sent by email to the landlord only for service on the tenant.

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: July 2, 2021

Residential Tenancy Branch