



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, OT
 OPC, FFL

Introduction

These proceedings originally commenced on April 12, 2021, based on an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “Act”). Those proceedings were adjourned as it was noted by the Arbitrator there was a hearing scheduled for August 19, 2021, to hear the Tenant’s application on the same issue. It was determined that April 12, 2021, hearing would be heard to allow both the Tenant’s and the Landlord’s applications to be crossed and heard at the same time. The matter was set for a conference call.

The Tenant’s application for Dispute Resolution was made on April 14, 2021. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause (the Notice) issued March 25, 2021 for more time to file to dispute the Notice, and for another issue not listed on the application form.

The Landlord’s Application was made on April 26, 2021. The Landlord applied to enforce a One-Month Notice to End Tenancy for Cause (the Notice) issued March 25, 2021, and to recover their filing fee.

The Landlord and the Tenant attended this hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires 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 the tenancy as well as another issue. The Tenant testified the other issues they are seeking a hearing regarding is that since purchasing the rental property, the new Landlord has made changes to the tenancy without the consent of the Tenant.

I find that this other issue is not related to the Tenant's request to cancel the Notice. As this other matter does 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 that I am dismissing with leave to reapply the Tenant's claim regarding that changes have been made to their tenancy agreement without their consent.

Issues to be Decided

- Is the Tenant entitled to more time to file to dispute the Notice?
- Should the Notice issued on March 25, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Landlord entitled to the recovery of the filing fee of their application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that the tenancy began on April 14, 2010, and that rent was \$325.00 per month. However, the Landlord also testified that rent had been recorded as \$541.00 per month on the tenancy agreement and that they were holding a \$270.00 security deposit for this tenancy. The Landlord was not able to account for this discrepancy.

The Landlord testified that they took over ownership of the rental property in February 2021 but that they had been the Tenant's neighbour for several years, proceeding them becoming the owner of this rental property.

The Landlord testified that they served the Notice to end tenancy to the Tenant on January 31, 2020, 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 or a person permitted on the property by the tenant has:*
 - *Significantly interfered with or unreasonably disturbed another occupant or the landlord*
 - *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord*
 - *Put the landlord's property at significant risk*
- *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.*
- *Tenant 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 of the landlord.*
- *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.*
- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.*
- *Tenant has not done required repairs of damage to the unit/site/property/park*

The Tenant testified that they filed to dispute the Notice late due to a family medical emergency, where their mother was hospitalized and required the Tenant's presence.

The Landlord testified that the Tenant was burning garbage on the rental property in breach of the municipal by-law and that on March 8, 2021, they called had had a municipal by-law enforcement officer attend the rental to the Tenant burning garbage on the property. The Landlord testified that when the by-law enforcement officer attended the property, the burning had stopped, so no fine was issued for burning garbage.

The Tenant testified that they have never burned garbage on the property and that when the by-law enforcement officer attends, they told them this and that they have never been fined for burning garbage.

The Landlord testified that in the years leading up to them taking over ownership of the rental property, they noticed that the Tenant and the Tenant's guest were trespassing on their property by walking through the backfields. The Landlord testified that they requested that the Tenant stop trespassing on their property and completed to the owner about this but that the owner at the time would not do anything about it.

The Tenant testified that the previous owner, their initial Landlord, also owned the property next door and that they had permission from the previous Landlord to walk through the back fields to get access to the local beach. The Tenant testified that they were not trespassing as they had permission from the owner to be there.

The Landlord testified that when they took over ownership of the rental property, they issued a list of required repairs and that the Tenant has refused to complete the required repairs. The Landlord testified that these repairs are required due to damage caused by the Tenant. The Landlord testified that the Tenant had installed a structure without the Landlord's consent, that they have added a lean-to to a pre-existing shed, installed a hot tub and dug a water line in the ground, all without the Landlord's consent.

The Tenant testified that they had the consent of their original Landlord for all of the things they installed on the rental property.

The Landlord agreed that all of the items they listed as damaged and requiring repair pre-existed their ownership of the property.

The Landlord testified that the Tenant's dog keeps trespassing on their property. When asked, the Landlord testified that they had not called by-law services regarding the Tenant's dog.

The Landlord testified that they had no evidence to prove that anything illegal was happening on the rental property.

Analysis

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

I find that the Landlord personally served the Tenant with the Notice to End the Tenancy on March 25, 2021. When a tenant receives a One-Month Notice to end tenancy for Cause, the *Act* provides ten days in which the tenant may dispute the notice.

Accordingly, I find that the Tenant had until April 5, 2021, the first business day following the expiry of the timeline, to file an application to dispute the Notice. In this case, I find the Tenant filed to dispute the Notice on April 14, 2021, which is outside the statutory time limit.

The Tenant has request additional time to file to dispute the Notice, pursuant to section 66 of the *Act*. Section 66 of the *Act* states that an extension of time may only be granted if the party requesting the extension has had an exceptional circumstance occur that prohibited them from filing their application within the statutory time limit.

Director's orders: changing time limits

66 (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].*

In this case, I accept the Tenant's testimony that they filed late due to an unexpected medical emergency in their family and that due to extra care this family member required, they were unable to submit their application to dispute the Notice within the ten-day time limit. I find it appropriate to grant the Tenant an additional ten-days to file their application to dispute this Notice.

As for the Notice, I have reviewed the testimony and documentary evidence in this case, and I find that the Landlord has not proven the claims that they made in their Notice. In this case of the Landlord had claimed that there is illegal activity happening on the rental property, for which they admit they have provided zero evidence to substantiate. They are also trying to end this tenancy based on actions of this Tenant that happened under the approval of the previous owner before this Landlord took ownership of the property. The Landlord was advised during these proceedings that they inherited this tenancy, as is from the previous owner, and that they could not make changes to the terms of this tenancy without the consent of the Tenant and that they could not end this tenancy for things that happened with the approval of the previous owner, while that owner was the Landlord.

Conclusively, I find that the Landlord has not proven sufficient cause to satisfy me, to terminate the tenancy for any of the reasons indicated on the Notice they issued. Therefore, I grant the Tenant's application to cancel the Notice issued March 25, 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 Landlord has not been successful in their application to dispute the Notice, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Landlord's application is dismissed in its entirety.

The Tenant's application to cancel the Notice, issued March 25, 2021, is granted. The tenancy will continue until legally ended in accordance with the Act.

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: August 19, 2021

Residential Tenancy Branch