



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding South Island Property Management
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order requiring the landlord to comply with the Act, regulation, or tenancy agreement; and
- recovery of the filing fee.

The tenant, his son, the tenant's witness, and the landlord's agent (landlord) representing the property management company attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing 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, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, digital, and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated two matters of dispute on the application, the most urgent of which is the application to cancel the Notice.

I am exercising my discretion to, and I therefore, **dismiss** that portion of the tenant's claim for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement with leave to reapply.

Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Has the landlord met the burden of proof to uphold the Notice?

Is the tenant entitled to recovery of their filing fee paid for this application?

Background and Evidence

Neither party could agree on the date this tenancy began. The tenant submitted that the tenancy began in 2003 and the landlord said it began in 2007. The listed landlord, an agent for the owner, was not the original landlord.

The tenant submitted a copy of the Notice, which showed the Notice was served to the tenant on June 25, 2021, and listed an effective end of tenancy or move-out date of July 31, 2021. The Notice was signed and completed by the landlord.

The tenant confirmed receiving the Notice on June 25, 2021. The tenant completed an amended application to dispute the Notice on June 29, 2021, according to the Residential Tenancy Branch (RTB) system.

The reasons stated on the Notice to end tenancy were that:

- The tenant is repeatedly late in paying rent; and
- The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In the Details of the Event(s) portion of the Notice, the landlord was required to describe what, where, and who caused the issue and include dates/times, names, etc. This information is required. An arbitrator may cancel the notice if details are not provided.

In this space on the Notice, the landlord wrote that the tenant delivered a request that the landlord attend the house to look at a drain in front of the garage. The landlord said they phoned the tenant for an inspection. After not hearing back, the landlord wrote they sent a letter to the tenant on March 25th, 2021, asking for the exterior to be cleaned up. After a subsequent inspection of the interior of the home, the landlord wrote a letter dated May 18th, 2021 requesting that the inside and outside of the home be cleaned up. Upon visiting the home on June 22, 2021, there had been no changes, according to the landlord.

Pursuant to Rule 6.6 and 7.18, the landlord's agent proceeded first in the hearing to support the Notice.

In support of the Notice, the landlord's agent said they were not seeking remedy based upon the tenant's late payment of rent. This was because the tenant's rent is partially paid by other sources and they have the inability of accept rent on non-business days.

I interpreted this to mean the landlord has abandoned this listed cause.

As to the other listed cause, the landlord submitted since the tenant has moved in, they are continually damaging the rental unit. For instance, the landlord has had to replace three faucets in one year and they have remodeled the bathroom three times. The landlord said they have spent over \$50,000 in repairs, not maintenance, and it is getting to the point the landlord can no longer financially afford to rent the rental unit.

The landlord submitted that in the last two years, the rental unit has gone downhill and is in a state of disrepair allowed by the tenant.

The landlord submitted when inspecting the rental unit, they noticed the state of disrepair. The rental unit has boarded up windows and clogged sinks with standing water. The tenant would not let the landlord enter one room during the inspection.

The landlord submitted that the tenant has refused to clean up the rental unit and they cannot access the rental unit for repairs until it is cleaned.

The landlord submitted that there is a trampoline in the front yard without fencing, which is a health and safety hazard, as anyone can come on the property and use the trampoline. The landlord said that if someone in that case is injured on the landlord's property, the owner would be financially responsible and the tenant refuses to remove it.

The landlord submitted that the tenant has unlicensed vehicles and tires sitting on the property.

The landlord submitted that the tenant has not maintained the health, cleanliness and sanitary standards throughout the rental unit.

The landlord's relevant evidence included photographs in and around the rental unit, invoices for past expenses, and letters of warning to the tenant.

Tenant's response –

The tenant submitted that the landlord's agent at the hearing has never been to the residential property and does not know the state of the rental unit.

The tenant asserted that he was served the Notice only because of his request to the landlord for repairs to the rental unit.

The tenant said that the original landlord allowed the trampoline, that he has had the trampoline for 19 years, and that his special-needs children still use the trampoline.

The tenant said that the main car was insured and provided proof to the landlord. Additionally, the other car was a classic car and kept under a tarp.

The tenant said that the rental unit requires re-painting as he has cleaned it so many times over the years, the surface has worn off.

The tenant submitted that some of the issues in the rental unit are a result of the flood and that the costs of the repairs were when the landlord replaced the plumbing and roof.

Tenant's witness –

The witness states that she is a long-time caregiver for the landlord's children and that damage to the flooring was due to the flood and water not properly draining. This issue was due to dirt in the pipes, not tenant caused, according to the witness.

The witness submitted that since March 2019, the landlord has not tried to fix the plumbing issues and was present when the tenant called the landlord for repairs.

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 tenant disputes a One Month Notice on time, which the tenant did in this matter, the onus of proof reverts to the landlord to prove that the One Month Notice is valid and should be upheld. If the landlord fails to prove the One Month Notice is valid, it will be cancelled.

I have reviewed the Notice and I find the Details of Cause(s) listed by the landlord to be too vague for the tenant to properly rebut the Notice. The Details of Cause(s) do not include or set out the specific areas or items the landlord wanted cleaned up or cleared. For instance, the landlord did not list they wanted the trampoline or cars removed. Without specifying exactly to what the landlord is referring, I do not find the landlord has clearly outlined in this Notice why or how the tenant was not maintaining normal health, cleanliness and sanitary standards.

The landlord is entitled to use extra pages attached to the Notice in order to give clear and specific details to the tenant.

For these reasons, I find that this One Month Notice, without more specific details, is insufficient to end a tenancy. Therefore, I find it unnecessary to consider any further evidence related to this Notice as I find this Notice itself to be too vague to be valid when the cause relates to a cleaning standard.

As a result of the above, I order that the Notice is cancelled, and it is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

As the tenants were successful in their application to cancel the Notice, I award them recovery of the filing fee in the amount of \$100. In full satisfaction of this award the tenants are entitled to retain \$100 from the next or a future months' rent payment. The tenants are directed to notify the landlord when this deduction is made.

Conclusion

The tenant's application seeking cancellation of the Notice is successful.

The Notice is cancelled as I find it too vague to end a tenancy.

The balance of the tenants' application not dealing with their request to cancel the Notice is dismissed, with leave to re-apply.

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: September 15, 2021

Residential Tenancy Branch