



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTHVIEW PROPERTY MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause dated April 29, 2021 (1 Month Notice) and to recover the cost of the filing fee.

Tenant VA (tenant), and an assistant for the agent, AW (agent) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed having received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing, I find the parties were sufficiently served in accordance with the Act.

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.

Furthermore, the email addresses of the parties were confirmed at the outset of the hearing. The decision will be sent by email to both parties.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be set aside?
- If yes, are the tenants entitled to the recovery of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 1, 2020 and is scheduled to revert to a month-to-month tenancy after November 31, 2022. Monthly rent of \$2,900.00 is due on the first day of each month.

On April 30, 2021 the tenant stated they received the 1 Month Notice posted to their door. The 1 Month Notice has no effective vacancy date listed. The tenants disputed the 1 Month Notice on May 8, 2021, which is within the 10-day timeline provided for under the Act to dispute the 1 Month Notice. The landlord listed the following causes on the 1 Month Notice:

1. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The Details of Dispute section of the 1 Month Notice states:

Gray water flood occurred March 19, tenant denied access for the owner to repair and restore. unit is at risk of mold forming.

[Reproduced as written]

The agent was asked why the 1 Month Notice was missing the effective vacancy date. The agent stated they did not know why.

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 1 Month Notice on time, which the tenant did in this matter, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1Month Notice is valid, the 1 Month Notice will be cancelled.

Section 52 of the Act applies and states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,**
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.
- [Emphasis added]

As the 1 Month Notice before me was missing the effective vacancy date, I find that it does not comply with section 52 of the Act and I set aside the 1 Month Notice as a result.

I find it is not necessary to consider any other details related to the 1 Month Notice as it does not comply with section 52 of the Act.

I ORDER that the tenancy continues until ended in accordance with the Act.

As the tenants' application was successful, I grant the tenant a one-time rent reduction of **\$100.00** from a future months' rent in full satisfaction of the recovery of the filing fee pursuant to sections 62(3) and 72 of the Act.

Conclusion

The tenant's application is successful.

The 1 Month Notice is cancelled as it does not comply with section 52 of the Act.

The tenancy shall continue until ended in accordance with the Act.

The tenant has been granted a one-time rent reduction of \$100.00 from a future months' rent in full satisfaction of the recovery of the filing fee pursuant to sections 62(3) and 72 of the Act.

This decision will be emailed to both parties as indicated above.

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: September 16, 2021

Residential Tenancy Branch