



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TPM PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, FFT

Introduction

The tenant applied to dispute a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”). In addition, they applied to recover the cost of the filing fee, pursuant to section 72 of the Act.

Both parties attended the hearing on September 24, 2021. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began June 1, 1999 and monthly rent is \$437.00. No written tenancy agreement was submitted into evidence by either party.

The landlord (while both persons representing the corporate landlord testified, the singular “landlord” is used for brevity) testified that they served the Notice because there is an issue with mold on the walls and floors of the rental unit. In addition, there is damage to the countertops and other parts of the one-bedroom rental unit. The landlord is concerned with the tenant’s health, given the mold.

The landlord testified that they have tried to work with the tenant over the years in removing some of her personal property but have not been entirely successful. The tenant was offered storage lockers and totes, which she has apparently not used. There is “so much stuff” stored against the walls and in the closet that the landlord cannot access the walls and carpet to properly assess the full extent of the mold problem.

The issue of storage of belongings and the risk it causes have “gone on for many years” and despite the landlord’s attempts the situation has not gotten better. In fact, remarked the landlord, it is now starting to noticeably get worse. Photographs of the interior of the rental unit were submitted into evidence, and they depict an enormous quantity of personal belongings (much of it are clothing) stored around the rental unit.

In rebuttal, the tenant’s advocate argued that the landlord’s photographs were taken from four to five years ago. The tenant submitted a series of photographs that were taken more recently, right after the Notice was served on her. The photographs also depict a rather large number of personal belongings, though the overall appearance is neater and tidier than the scenes depicted in the landlord’s photographs.

The advocate stated that the tenant has lived in the rental unit for about 22 years and pays a very affordable rent. He briefly suggested that perhaps the landlord seeks to rent out the rental unit at a higher rent (which the landlord vehemently disputes). Moreover, the advocate pointed out that there is in evidence no letters of warning or any other documentary evidence that this is an ongoing issue as suggested by the landlord.

In redirect, the landlord asked the tenant whether they had many property managers work with her over the years in trying to resolve this issue. The tenant, whose English is rather rudimentary, testified that “I do what they want me to [. . .] I don’t know what I do wrong.” It is noted that much of the tenant’s testimony was somewhat difficult to follow.

Analysis

In cases such as this, where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. Here, the Notice was issued under section 47(1)(h) of the Act, where it is alleged that a “tenant (i) has failed to comply with a material term, and (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so[.]”

In this case, while the landlord has very real and legitimate concerns regarding mold in the rental unit, nowhere in evidence is there a copy of the relevant material term that the tenant has allegedly failed to comply with. Nor, it must be noted, is there a copy of any written notice ever being given to the tenant regarding her alleged non-compliance with a material term. In short, the very basis on which the Notice was issued lacks any supporting evidence as to purported ground of non-compliance with a material term and of the tenant not correcting the situation.

In summary, then, taking into consideration all of the oral testimony and documentary evidence presented, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the Notice was given.

Accordingly, the Notice is cancelled effective immediately. The tenancy shall continue until it is ended in accordance with the Act.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenant succeeded in her application, I award her \$100.00 in compensation to cover the cost of the filing fee. Under [section 72\(2\)\(a\)](#) of the Act the tenant is authorized to deduct \$100.00 from the rent for October or November 2021 in satisfaction of this award.

Conclusion

The tenant's application is hereby granted and the One Month Notice to End Tenancy for Cause, dated May 17, 2021, is cancelled, effective immediately.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 27, 2021

Residential Tenancy Branch