



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The tenants filed an Application for Dispute Resolution on May 26, 2021 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 27, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter

The tenant in the hearing stated that they delivered notice of this dispute to the landlord. The landlord confirmed this; however, they did not receive photos prepared by the tenant that the tenant provided to the Residential Tenancy Branch.

The *Residential Tenancy Branch Rules of Procedure* sets out the rule for the respondent’s evidence. By Rule 3.14 provides that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I advised the parties at the outset of the hearing that I would decide whether the landlord needed an opportunity to review specific pieces they stated they did not have. This was for any relevant piece should the tenant need to rely on it and choose to mention it directly in the hearing. The tenant understood this and stated they were prepared to proceed with the hearing and their oral testimony. I advised both parties at the outset that these pieces of evidence would not receive my separate consideration without full disclosure to the landlord.

At the outset of the hearing, the landlord confirmed they did not provide documentary evidence for this hearing. They relied on 4 pages of photos that they gave to the tenant when they served the One-Month Notice.

Issue to be Decided

Is the tenant entitled to a cancellation or withdrawal of the One-Month Notice, issued on May 21, 2021?

Should the tenant not be successful, is the landlord entitled to an Order of Possession, as per s. 55 of the *Act*?

Are the tenants entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord issued the One-Month Notice on May 21, 2021. They served this document on the tenants on that same date. The landlord initially stated they served one of the tenants in person; however, when the tenant in the hearing stated they found the document taped to the door at the rental unit, the landlord changed their recollection to state “the tenant wouldn’t accept it, so then I taped it to the door.”

On page 2, the landlord indicated a number of reasons for issuing the One-Month Notice. In the hearing, the landlord stated why, and the tenant had the chance to respond to each charge.

- ☐ Tenant has allowed an unreasonable number of occupants in the unit/site/property/park

The landlord stated there were more people living in the rental unit. This was traffic “coming and going, sometimes after midnight.” This left other residents in the same property complaining to the landlord about this. In response, the tenant stated these were visitors who were not living at the rental unit. They also stated the landlord had installed cameras, and “if any person comes” the landlord calls and speaks disrespectfully to the tenants at any time.

- ☐ Tenant is repeatedly late paying rent

The landlord stated the tenants had only paid rent on time for the last two months – prior to this, the tenants were always late. This was always 7 or 8 days, and sometimes 15 days. In May 2021, the tenants paid the rent in the third week of the month. The tenant acknowledged late payments – being “2 or 3 days late”. As of the time of the hearing, both tenants were working and able to pay the rent as shown for the last two months.

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

This involves another person – not one of the tenants – parking in the garage space and working on their vehicle in that space. This was with a cutting torch which is a fire hazard. Another time this was a big truck, with work continuing after 9 or 10 pm. Such work of repairing cars is a fire hazard. The tenant acknowledged just one time of car repair work being undertaken, with someone who does not live there – it was not ongoing.

- 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 or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord

The landlord did not explicitly present that the tenants or their visitors engaged in illegal activity. They described frequent visitors to the rental unit at various times of the day; the tenant outlined that these are their own visitors, or friends of their child. At another point in the hearing, the tenant stated the landlord referred to them as “crackheads” and used video monitoring to watch visitors.

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord described smoking in the rental unit; the tenant maintained that they/visitors smoke only on the deck which is outside. The landlord stated the neighbour downstairs does not smoke; the tenants describe littered cigarette remains and coming from that unit below. The landlord provided photos attached to the One-Month Notice that show cigarette remains. On page 3 of the document, the landlord notes “Cigarettes used in the unit and thrown out bedroom window (no smoking permitted in unit).”

The landlord also listed “excessive damage to furnace ducting and . . . ceiling.” Photos show holes drilled in the ceiling and furnace duct. In the hearing, the landlord described how the

tenants did this when they were searching for a missing pet within the unit. The landlord had approved this measure when the tenant was very upset at the time; however, the agreement was that the tenants had to repair that, over one year ago. The tenant acknowledged this happened and clarified that they had asked the landlord's permission to take these measures. The landlord finally made the repairs 3 months prior to the hearing.

The landlord also described "damage to grass due to multiple visitors with neglect". A photo was attached to the One-Month Notice showing the area, with no vehicle. They described the tenants' vehicle always parked by the front door, after the landlord told them to park it in a different place. The tenant claimed the tenant below has a friend who parks on that space, and the damage to the grass was always present.

- security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The landlord presented there was no initial pet damage deposit; however, they made it a requirement after the tenant acquired pets. This amount was \$375. The tenant stated they were informed it was a \$750 amount. They were waiting for this hearing to see if they had to pay it. With the amount being only \$375, the tenant pledged to pay this amount.

Analysis

I find as fact the tenant received the One-Month Notice served by the landlord on May 21, 2021. This was attached to the rental unit door. The tenant properly applied within 10 days of receiving the One-Month Notice, as specified on that document.

The *Act* s. 47 lists the reasons a landlord may end a tenancy. This specifies "if one or more of the following [reasons] applies."

In this matter, the onus is on the landlord to provide sufficient evidence to show they have cause to end the tenancy. On my review, they have not provided sufficient evidence to prove the details they indicate on page 2 of the One-Month Notice. There is a lack of quality and quantity of necessary evidence to overcome the burden of proof here.

Specific points based on what the landlord provides, based on a balance of probabilities with the statements of the tenants:

- There is no evidence the tenant allowed other occupants to stay in the unit. The landlord did not provide definitive proof of this in their evidence. As such, the landlord's statements on this are a mere assertion. I accept the tenant's evidence that there were visitors to the rental unit.
- The tenant acknowledged late rent payments in the past. This does not excuse late rental payments even as a reason to end the tenancy; however, the landlord was not specific enough on late payments in terms of dates or other details. If this were to exist as the sole reason for ending the tenancy, there is not enough evidence to show this was in fact the case. Additionally, it is not known if the landlord raised this issue with the tenants in the past.
- Issues of parking are not shown in the evidence. I am not satisfied this resulted in lawn damage based on the single photo that is in the evidence. Respectfully, it does not appear to be a well-manicured lawn area requiring attention. I cannot determine that the tenants are the cause of yard damage due to their own parking. The landlord provided a picture of the area; however, he has not shown definitively that the tenants parked in the area in question.
- I am not satisfied that automobile maintenance presents a significant risk to the property. It is not known if the landlord presented this as a problem to the tenants prior to issuing the One-Month Notice.
- There is no evidence of illegal activity. I find this is mere speculation by the landlord and based only upon the frequency of visitors.
- There is no isolated evidence of smoking linking the cigarette litter directly to the tenants.
- There is damage present to the duct and ceiling; this was entirely due to the actions of the tenant. The landlord and tenant both presented that the landlord agreed to this procedure to retrieve a pet. I find this is not damage that was wilfully or negligently caused by the tenants.
- There was no record of the landlord specifying the amount of the damage deposit to the tenants. I accept the tenant's statement in the hearing that this amount of \$375 was new information to them. It is unjust to end a tenancy on this reason alone.

In sum, no reason indicated on page 2 of the One-Month Notice – either individually or collectively – ends the tenancy. The landlord described various issues in the hearing; however, the tenant also provided ample evidence in the form of testimony that reduced the weight of the landlord's account. In making my decision here, I did not review the photos provided by the tenants and relied only on the tenant's oral testimony. The landlord did not provide references to specific dates or other individuals involved; this is information that would normally accompany the high standard of proof that is necessary to end a tenancy.

As the tenants were successful in this application, I find they are entitled to recover the \$100.00 filing fee paid for this application. I authorize the tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One-Month Notice issued May 21, 2021 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 28, 2021

Residential Tenancy Branch