



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, LRE, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was assisted by advocate JS. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

The landlord confirmed receipt of the notice of hearing before September 05, 2021 and the evidence in person on September 05, 2021. Based on the landlord's testimony, I find the tenant served the notice of hearing and the evidence in accordance with section 89(1)(a) of the Act.

The landlord affirmed he served the response evidence in person on May 26, 2021. The tenant stated he did not receive the response evidence. Based on the landlord's more convincing testimony, I find the landlord served the response evidence in accordance with section 89(1)(a) of the Act.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One month notice to end tenancy and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the ground for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on February 01, 2020. Monthly rent is \$1,500.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$750.00 was collected. The tenant testified the landlord holds this amount in trust. The landlord said he was authorized to use the security deposit for the payment of February 2021 rent. The tenancy agreement was submitted into evidence. Both parties agreed that only two people can occupy the rental unit.

Both parties agreed the Notice was served in person on May 02, 2021.

A copy of the Notice was submitted into evidence. The Notice is dated May 02, 2021 and the effective date is June 06, 2021. The reason to end the tenancy is: Tenant has allowed an unreasonable number of occupants in the unit.

The details of the Notice are:

On 27th April 2020, I inspected the house. I saw: a girl jacket, girl boots, teddy bear, small chair, plenty of toy, and a stroller. I also saw stylish lady clothing in the closet in the master bedroom.

[...]

There are 3 persons of [redacted for privacy] family.

If [tenant] also lives there, he is the 4th.

To say NA also lives there, she is the 5th.

There is only 1 bathroom. There is only 1 kitchen.

Our rental contract specifies that only 2 persons are allowed. There shouldn't be 5. Unreasonable!

The tenant submitted this application on May 11, 2021 and continues to occupy the rental unit.

The landlord submitted into evidence a photograph showing a baby stroller in the backyard and a drawing showing a car that does not belong to the tenant parked on the rental unit's driveway in April 2021.

The landlord affirmed there are too many people occupying the rental unit. Later the landlord stated there are five people occupying the rental unit. The landlord testified he inspected the rental unit and found children's toys, a baby stroller and a car that does not belong to the tenant parked on the rental unit's driveway. The landlord said that maybe the inspection was in January 2021.

The tenant affirmed that since February 2020 only himself and NA have occupied the 1,200 square feet 2-bedroom rental unit. The tenant stated a friend of NA sometimes visits her and that she left the children's toys and the baby stroller in the rental unit.

The landlord testified NA's friend told him that she lives in the rental unit. The tenant said NA's friend does not live in the rental unit.

Analysis

A tenant may dispute a notice to end tenancy for cause within ten days, pursuant to section 47(4) of the Act. As the tenant confirmed receipt of the Notice on May 02, 2021 and submitted this application on May 11, 2021, I find the tenant disputed it within the timeframe of section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 47(1)(c) of the Act states:

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(c) there are an unreasonable number of occupants in a rental unit;

The testimony offered by the landlord was vague and the one offered by the tenant was convincing. I find the photograph showing a baby stroller in the backyard and the drawing showing the car parked on the rental unit's driveway do not prove that the tenant has allowed an unreasonable number of occupants in the rental unit. I find the landlord failed to prove, on a balance of probabilities, that the tenant has allowed an unreasonable number of occupants in the rental unit.

Thus, I find the landlord failed to prove, on a balance of probabilities, the ground of the Notice. Accordingly, the Notice dated May 02, 2021 is cancelled and of no force or effect.

As the tenant is successful with the application, I authorize the tenant to recover the \$100.00 filing fee. I order that this amount may be deducted from the next rent payment.

Conclusion

The One Month Notice dated May 02, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$100.00 from the next rent payment to recover the filing fee.

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 21, 2021

Residential Tenancy Branch