



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDCT FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated June 21, 2021 (1 Month Notice), for a monetary claim of \$100.00 due to a rent increase that the tenant alleges was imposed contrary to the Act and to recover the cost of the filing fee.

The tenant, the landlord, KD (landlord) and KD's spouse/partner, CB (spouse) 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 given the opportunity to ask questions. 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.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find the rent increase issue is not sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply**.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be set aside?
- If yes, is the tenant 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 October 1, 2019 and reverted to a month-to-month tenancy after September 30, 2020. Monthly rent is \$1,000.00 per month and is due on the first day of each month.

There is no dispute that the tenant received the 1 Month Notice dated June 21, 2021 with an effective vacancy date of July 31, 2021. The tenant disputed the 1 Month Notice on June 24, 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 significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The 1 Month Notice states in the Details of Cause(s) section the following:

Details of Cause(s): 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.
Details of the Event(s): [redacted] (basement tenant) has repeatedly smoked on the property. This is a material breach of the lease. The landlord [redacted] witnessed him smoking on the property at least twice in the past (once in May 2020) and reminded him that this was prohibited under the lease agreement. Past and current tenants who live on the main floor of the house have reported to the landlord that the tenant smokes on the property. Tenants report speaking with the basement tenant about the breach in April 2021; however, they report that the behaviour has not ceased. It should be noted that both the basement and main floor tenants are all prohibited from smoking on the property.

[Reproduced as written except for anonymizing names to protect privacy]

The parties were advised during the hearing that due to the Details of Cause(s) section failing to include any specific dates, that I did not need to hear from either party further regarding this matter due to the allegations being too vague to end a tenancy.

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.

As indicated above, I find the Details of Cause(s) listed by the landlord to be too vague for the tenant to properly rebut the 1 Month Notice. The Details of Cause(s) do not include specific dates, only May 2020 and April 2021, and does not include any specific times which a tenant could properly defend themselves in this matter. Therefore, I find that such a 1 Month Notice, without more specific details, is insufficient to end a tenancy. Therefore, I find it unnecessary to consider any further evidence related to the 1 Month Notice as I find the 1 Month Notice itself to be too vague to be valid when both causes relate to smoking and there are no specific dates and times, etc.

As the landlord has failed to prove that the Notice was valid, **I set aside** the 1 Month Notice.

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

As the tenant's application was successful, I grant the tenant the recovery of the \$100.00 filing fee pursuant to section 72 of the Act. **I authorize** the tenant a one-time rent

reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The tenant's application is successful.

The 1 Month Notice is cancelled as it is too vague to end a tenancy.

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

The tenant has been granted a one-time rent reduction of \$100.00 as described above.

This decision will be emailed to both parties.

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: October 22, 2021

Residential Tenancy Branch