



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, LRE, OLC, FFT, PSF

Introduction

This hearing dealt with the tenants' application pursuant to to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 63; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the tenants attended the hearing by way of conference call, the landlord did not. I waited until 9:41 a.m. to enable the landlord to participate in this scheduled hearing for 9:30 a.m. During the hearing, I confirmed from the online teleconference system that the tenants and I were the only ones who had called into this teleconference. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses

The tenants clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The tenants confirmed that they understood.

The tenant testified that the landlord was served with their application and evidence package by way of registered mail on October 24, 2021. The tenants provided the

tracking information in their evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find the landlord deemed served with the tenants' Application and evidence package, 5 days after mailing. The landlord did not submit any evidence for this hearing.

The tenants confirmed receipt of the 1 Month Notice dated October 9, 2021, which was served to the tenants by email. In accordance with sections 88 and 90 of the *Act*, I find that the 1 Month Notice deemed served 3 days after emailing, on October 12, 2021.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to an order for the landlord to comply with the *Act*?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2021, with monthly rent currently set at \$1,200.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$600.00, which the landlord still holds.

The tenants testified that he had received the landlord's 1 Month Notice on October 9, 2021. The tenants testified that the landlord served them the 1 Month Notice as the landlord wanted to end the tenancy and move in after various issues between the parties.

The tenants confirmed that the landlord was no longer withholding access to heat and electricity, but that in one of the rooms the heat was not working properly. When a repair request was made, the landlord had informed the tenants that the system was old. The tenants testified that the landlord has entered the rental unit without proper notice, and requested that the landlord comply with the Act and provide proper notice before entering the rental unit.

The tenant disputes the reason provided on the landlord's 1 Month Notice which stated that the "tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord". The tenant testified that the landlord had accused him and his children of being too loud, and for bothering the other occupants. He testified that his kids were three and six years old, and the noise was the result of them playing. He testified that he resided in the basement suite, while other tenants resided upstairs.

The tenant is seeking cancellation of the landlord's 1 Month Notice, as well as monetary compensation in the amount of \$200.00 for "Loss of wages" as indicated on his monetary worksheet, and recovery of the filing fee.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenants are deemed to have received the notice. As the tenants filed their application within the required time limit under the *Act*, the onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

In the absence of any evidence or submissions from the landlord in this hearing, I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Under these circumstances, I am allowing the tenants' application to cancel the landlord's 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*.

The tenants filed an application for the landlord to provide services and facilities as required.

Section 32 of the *Act* reads in part as follows:

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement...

I find that the landlord had provided a sufficient explanation for why the heating may not be as efficient as newer homes. I am not satisfied that the landlord had filed to provide services or facilities as required at this time, and accordingly, I dismiss this portion of the tenants' application with leave to reapply.

The tenants also testified that the landlord would enter the rental unit without proper notice.

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenants' permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I order that the landlord comply with section 29(1) of the *Act* as set out above.

As the tenant were successful in their application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice dated October 9, 2021 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenants to recover the filing fee. I allow the tenants to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order that the landlord comply with section 29(1) of the *Act*.

The remainder of the tenants' application is dismissed with leave to reapply.

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: November 18, 2021