



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated August 6, 2021 ("One Month Notice"), for an Order for the Landlord to Comply with the Act or tenancy agreement; and to suspend or restrict the Landlord's right to enter.

The Tenants, A.H. and J.H., the Landlord, M.V.N., and a translator for the Landlord, M.L. ("Translator"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In terms of service of the Tenants' Notice of Hearing package to the Landlord, the Tenant said that he gave the Landlord these documents in person on September 10, 2021, after he received them from the RTB. He said he saw the Landlord put the documents in his truck. The Tenant said he remembered walking out the back door of the residential property with these documents, and the Landlord was there, so he said he handed the documents to the Landlord.

The Landlord said that the Tenants did not serve him with any paperwork for this proceeding. However, later he said he remembered taking a page with instructions for responding to this proceeding from the glove compartment in his truck.

I find that the Landlord has made internally inconsistent statements in denying having received any documents relating to today's hearing, but also having received portions of the Notice of Hearing package. I find it more likely than not that a party would serve an

entire package to the other party, rather than simply one or two pages. Based on the evidence before me on this matter, I find it more likely than not that the Tenants served the Landlord with the Notice of Hearing package for this proceeding. The Tenants did not submit any additional evidence to the RTB or for service on the Landlord. I, therefore, continued to hear from the Parties about the matters before me in the hearing.

The Landlord submitted a copy of a 10 Day Notice to End a Tenancy for Unpaid Rent; however, he acknowledged that he did not serve it to the Tenant as evidence on which he intended to rely for this hearing. Rather, I find it is an eviction notice not disputed in this Application. Accordingly, I will not consider the 10 Day Notice submitted by the Landlord in making my Decision in this matter.

Preliminary and Procedural Matters

The Tenants provided their email address in their Application and they confirmed this address in the hearing. The Landlord provided his email address in the hearing through the Translator. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

Before they testified, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants' request to set aside the One Month Notice at this proceeding. Therefore, the Tenants' other claims are dismissed, with leave to re-apply.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?

- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2020, with a monthly rent of \$1,100.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$480.00, and no pet damage deposit.

No one uploaded a copy of the One Month Notice for me to review in evidence, but in the hearing, the Parties agreed that the One Month Notice was not signed or dated, but that it has the rental unit address. The Tenants said it was served in person on August 9, 2021. They said this was "...two hours after the last hearing, in which the Landlord's eviction notice was cancelled by an adjudicator." The One Month Notice had an effective vacancy date of September 30, 2021. The Tenant said that the Landlord checked every ground on the One Month Notice, except for four boxes that have nothing to do with this tenancy (such as the Tenant's rental unit is part of the tenant's employment as a caretaker, manager, or superintendent of the property...).

I advised the Parties that the Landlord holds the burden of proof on a balance of probabilities, since he served the eviction notice. I then asked the Landlord why I should confirm the One Month Notice, rather than cancel it as the Tenants requested. The Landlord said: "Because too many people in and out. How many people in there? Different people four to five people every day." I asked the Landlord why this is a problem, and he said that it is hard on his building. He also said, "They stole my camera, and the money from the laundry. They do everything."

I asked the Landlord if he has proof of any of his claims, and he said he had pictures, although he said he was too late to upload them as evidence for this hearing. Further, he would not describe what the pictures showed or proved.

I asked the Landlord how he knew where visitors were going in the building, as the Parties agreed that there are five other tenants in the building. The Landlord said:

I know who is bad people and who is good people. I see the people go in and out, and I see them, and I call the police a lot of time too, because they wreck everything. How do they get a key? I call the police when someone who didn't live there had a key. He said a friend gave it to him. I don't know which friend.

The Tenant that he cannot let people into the building from his apartment; rather, he has to go down to the front door to let them in. The Tenant said on occasion, he has dropped his key down to a visitor from the balcony, so that the visitor could let himself in without the Tenant having to go down to the front door, but the Landlord stops these people.

The Tenant said that he has lost two job opportunities,

...because the Landlord stands at the door not letting people in. One other tenant stands and polices the door - guards the door - they won't let people pass. All we want is to be left alone. I have a 70-year-old aunt who won't come here now, because the Landlord questions her. He has physically pushed our guests out the door, and it's not right.

I offered the Parties an opportunity to make any last statements and the Landlord said: "That's all. Only way I want them out, that's all." The Tenant's last statement was: "I'd like to make it known that I've lost two job opportunities, because the Landlord stands at the door not letting people in."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out the burden and standard of proof in this administrative hearing:

Rule 6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 47 of the Act sets out the grounds on which a Landlord can end a tenancy for cause. The Tenant said that the Landlord checked off all the grounds noted below on

the One Month Notice.

Landlord's notice: cause

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

. . .

(b) the tenant is repeatedly late paying rent;

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

. . .

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

(h) the 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;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property.

However, the Landlord did not specify which section of the Act the Tenants breached to warrant their eviction. He implied section that section 46 (1) (c) of the Act is relevant - that there were an unreasonable number of occupants in the rental unit. However, the Landlord spoke of visitors to the unit, not occupants of the unit. There was no mention of anyone extra staying there, nor were other grounds of eviction mentioned.

Based on the evidence before me overall, I find that the Landlord has not provided sufficient evidence to confirm the validity of the One Month Notice, including not having submitted a copy of the One Month Notice into evidence. I, therefore, cancel the One Month Notice and find that it is void and of no force or effect.

Conclusion

The Tenants are successful in their Application, as the Landlord provided insufficient evidence to support his burden of proof on a balance of probabilities. The One Month Notice is cancelled and is of no force or effect. The Tenants' other claims are dismissed with leave to reapply.

The tenancy will continue until ended in compliance with the Act.

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 24, 2021

Residential Tenancy Branch