



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, LRE, OLC, FFT

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 September 2, 2021 ("One Month Notice"); for an order to provide services or facilities required by the tenancy agreement or law; to suspend or restrict the Landlord's right to enter; for an order directing the Landlord to comply with the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of their Application filing fee.

The Tenant and the Landlord 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. One witness for the Landlord, S.K., was also present and provided affirmed testimony.

During the hearing the Tenant 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.

We discussed service of the Notice of Hearing documents and evidence between the Parties. The Landlord said that he received the Notice of Hearing from the Tenant, and he said he also received an email from the Tenant at midnight prior to the hearing. The Landlord said that he did not open this email, as it was too late for the hearing.

The Tenant said he received documents from the Landlord at the previous dispute resolution hearing; however, the Tenant said he did not receive any evidence from the Landlord for the current proceeding. I advised the Parties to let me know if the other Party presents a document in the hearing that the first Party was not given. No one raised this as an issue during the hearing; therefore, I continued to hear from the Parties and consider the evidence they presented in the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision and Orders would be emailed to the appropriate Parties.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I told them that 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 Tenant's request to set aside the One Month Notice, and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

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 tenant's application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content. The burden of proof is on the Landlord.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on March 1, 2021, ran to August 31, 2021, and then operated on a month-to-month basis. They agreed that the Tenant pays the Landlord a monthly rent of \$750.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$375.00, and no pet damage deposit.

The One Month Notice that the Tenant submitted was a piece of paper with the handwritten note:

Hi

This is your 30 days notice for move out.

You must move out before Sep 30, 2021.

[Landlord]

However, in the hearing, the Landlord said that she also submitted a copy of the One Month Notice that was on the correct RTB form - an RTB-33 - One Month Notice to End Tenancy for Cause. The Landlord said:

The One Month Notice was signed and dated September 2, 2021, it has the rental unit address, it was served via email and by Canada Post on September 2, 2021, with an effective vacancy date of October 31, 2021. The One Month Notice was served on the grounds that the Tenant changed the lock and didn't provide a key to the Landlord; he fights with his roommate about fobs and the recreation room; he made three late rent payments; he's a bully to the Landlord; and I want to keep it empty, because of my insurance.

The Landlord said that the Tenant was late paying rent in September, November, and December of 2021. She said:

He's the last person to pay rent. My mortgage goes out from my account from the first at 6 a.m., and the Tenant has paid rent so late, so my cheque bounced. I asked him to pay rent on the first before noon, but he pays on the second.

The Tenant responded:

There was only one time I paid on the second – in November [2021], but not in September - and the other one is not considered late, because the prior arbitrator explained fully all these stories to [the Landlord]. She claims about all these details for everything she already said. She already explained fully about what is considered as a late payment.

But [the Landlord] repeated ... she made a lot of stress. She said always the other tenants paid late, too. The tenants are not responsible for her mortgage, you know. I have all the proof for any of her claims. It is not related to the rent, but insurance.

The Landlord asked to bring in her Witness. The Landlord said the reason for calling this Witness is that:

[The Tenant] shouted at me, and harassed me, and bullied me in front of my contractor. I'm 57 years old and I can't take any bullies and lies from [the Tenant].

The Landlord asked the Witness: "Did you see that [the Tenant] shouted at me?"
The Witness said:

Both of these guys, the man and [the Landlord], the same country. I have no issue with either, but the point of the time I was there, they argued together. But I was busy to the work, because it was not my issue what they are doing together. My business is fixing the problem. I feel it.

These guys argue together. What about - I have no clue. I like both of them the same level. Nothing changing. I have respect for both of them. But as a witness, he was talking to the lady arguing with her, but I don't know the English what it means. Honestly. I talked to the guy – you are the man - you don't have to talk to her like that. You can go somewhere else, if you are not happy here. When he's talking, she has to defend herself, but what they are talking, what is the issue, I don't know.

In my country, if you're not happy, go somewhere else. We are human beings. We have to help each other. I'm not here for the lady, I'm here as a witness. Who's right? I have no clue. The way I'm telling you is true, because both of these guys are the same country. I love both of them, and it was embarrassing in the moment. They should fix the problem. It is not something serious. This guy is tenant, and this guy is landlord. If not happy, go some other way.

Analysis

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

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

However, Policy Guideline 38, “Repeated Late Payment of Rent” states:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

[emphasis added]

The Landlord listed three incidents of late payment on the part of the Tenant; however, two of the alleged late payments were after the One Month Notice was served; I, therefore, find that they cannot be considered grounds for having served the One Month Notice. As such, the Landlord alleged only one late rent payment prior to serving the One Month Notice.

Based on the evidence before me regarding late rent payments, I find that the Landlord has not provided sufficient evidence to meet her burden of proof in this matter.

In terms of the Landlord’s allegations that the Tenant bullies or harasses her, I find that the Landlord’s Witness advocated for both Parties, saying that they were arguing with each other. Further, the Witness said he did not know what they were talking about; it

could have been the Landlord harassing the Tenant. Based on the evidence before me overall, I, therefore, find that the Witness did not provide evidence supporting the Landlord's claim that the Tenant harasses her. I find that this is not a ground for evicting the Tenant for cause.

During the hearing, the Landlord mentioned that having three unrelated people in the rental unit will negatively affect her insurance coverage. She said that her insurer prefers that she has a single family occupying the residential property. However, this is not a ground under the Act for evicting a tenant.

When I consider the evidence before me overall, I find that the Landlord has not provided sufficient evidence to support her grounds of eviction on the One Month Notice, and to meet her burden of proof in this matter. I, therefore, cancel the One Month Notice and find it is void and unenforceable, pursuant to section 62 of the Act.

The Tenant is successful in his Application to cancel the One Month Notice. The tenancy will continue until ended in accordance with the Act.

Given the Tenant's success in this matter, I also award him with recovery of the **\$100.00** Application filing fee for this proceeding pursuant to section 72 of the Act. The Tenant is authorized to deduct \$100.00 once from one future rental payment in complete satisfaction of this award. The Tenant's other claims are dismissed with leave to reapply.

Conclusion

The Tenant is successful in his Application to cancel the One Month Notice, as I find that the Landlord did not provide sufficient evidence to meet her burden of proof in this matter on a balance of probabilities. The One Month Notice is cancelled and is of no force or effect. The tenancy continues until ended in accordance with the Act.

The Tenant is also awarded recovery of the **\$100.00** Application filing fee, and is **authorized to deduct \$100.00 from one upcoming rent payment** in complete satisfaction of this award. The Tenant's other claims not addressed in this Decision are dismissed with leave to reapply.

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: January 31, 2022

Residential Tenancy Branch