



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on September 1, 2021. They seek an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) and recovery of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 13, 2022. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both the Landlord and the Tenant attended the hearing, and I provided each the opportunity to present oral testimony and make submissions in the hearing. The Tenant confirmed they received evidence documents prepared by the Landlord for this hearing. The Tenant did not prepare evidence for this hearing.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Landlord provided a copy of the tenancy agreement for this rental unit. The agreement carried over from the original tenancy started with the Tenant's own child who thereafter deceased. The Tenant remains in the rental unit. The current amount of rent paid by the Tenant is \$625, and they must pay for their own utilities. While the Landlord maintains the Tenant in this hearing occupied the rental unit in some capacity since 2017, the Tenant in the hearing stated they began to live there starting from August 2020. The Tenant "took over completely" and pays all the utility bills in their own name.

The copy of the One Month Notice document in the evidence shows the date it was issued by the landlord as August 31, 2021. This was for the end-of-tenancy date on September 30, 2021. The Landlord stated in the hearing that they served this in person to the Tenant on August 31.

The Landlord indicated the single reason they issued it to be because the Tenant has put the Landlord's property at significant risk. The Landlord provided a description on that same page: The Tenant is not capable of going to the bathroom alone, and there is a toilet for these purposes in the living room; the unit is "dirty with a bad smell"; the Tenant is not capable of leaving in case of fire; the hydro utility was disconnected for 26 hours; and the Tenant is always alone, with their child only checking on them in the evenings.

The Landlord provided a written explanation with their evidence documents for this hearing. There was an incident in July 2021 involving a fire alarm, and the Landlord and another Tenant had to "wheel [the Tenant] down the hallway in [the Landlord's] desk chair". The apartment was in "total disarray" with "a lot of garbage". The Landlord was aware that health assistants were helping the Tenant but recently that service had ceased.

In the hearing the Landlord reiterated these points and stated plainly: "It's just not safe for [the Tenant] to be there all the time . . . if something were to happen, it's just not safe." The Landlord described too much furniture within the unit, an ongoing concern about waste and clean-up, and a bathroom flood situation requiring repair. In answer to a specific question about risk to the Landlord's property, they described the overall situation as "unsanitary."

In response, the Tenant elaborated on specifics in the Landlord's evidence:

- community services, through which nursing assistance was provided, set up assisted living amenities within the rental unit and checks up on this on a regular basis – this is to ensure the Tenant is “self-sufficient”
- the Tenant's child took over these responsibilities, but the nurses continue to check all the time, they call at least every month, and now being aware of this end-of-tenancy situation will call again on a frequent basis
- the Tenant is mobile within the rental unit, and gets exercise independently by going up and down the hallway in the building
- the Tenant's child visits every day to provide meals and clean – this is from 6pm – 12 every day and there is “no sign of me stopping doing it” according to the Tenant's own child in the hearing
- community services never mentioned any concern about the cleanliness of the rental unit
- the hydro utility disconnection was a “one-off” due to an error, not indicative of a larger issue.

In sum, the Tenant submitted they are well-attended to, receive regular support from nursing staff, and their fridge is filled with meals.

Analysis

The *Act* s. 47 provides various grounds for which a landlord may end a tenancy by issuing a One-Month Notice.

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. On my review, the Landlord has not provided sufficient evidence to prove the reason they indicated for ending the tenancy, that the Tenant is putting the Landlord's property at significant risk. I find the Landlord issued this One-Month Notice more out of concern for the Tenant's well-being, rather than an actual risk to the property.

Chiefly, the Landlord did not show that actions of the Tenant bring risk to the property. There is no record of any damage to the property. Nor did the Landlord's conjecture show how the Tenant's living arrangement become some risk of damage to the property.

Further, I find the Landlord gave this indication on the One-Month Notice chiefly because of the situation they observed within the rental unit; however, this is not borne out by the evidence. I give more weight to the Tenant's own testimony that community services is aware of the situation and provides regular ongoing follow-up. I also trust the Tenant's account that their family member is visiting on a regular basis to attend to things within the rental unit. This is with the best interests of the Tenant in mind. On a balance of probabilities, I find it more likely than not that the Tenant is receiving adequate care. This includes cleanliness within the unit. There is no evidence that an unsanitary state or other deficiencies are impinging in any way on the state of the rental unit property.

I find the One-Month Notice is not valid. The Landlord has not met the burden of proof; I so order the One-Month Notice to be cancelled. As the Tenant was successful in this application, I find they are entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One-Month Notice issued on March 11, 2021 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 17, 2022

Residential Tenancy Branch