



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: OPC
 TT: CNC FFT

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession pursuant to section 55.

The tenant applied for:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was accompanied by a family member. The tenant was assisted by an advocate.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The landlord confirmed receipt of the tenant’s application and materials on September 23, 2021. Based on the undisputed testimony I find the landlord duly served with the tenant’s materials on that date in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they personally served the tenant with their application for dispute resolution on September 23, 2021. The tenant disputes that they were served with the application but confirmed receipt of the landlord's evidence in January 2022. The tenant is aware that the landlord is seeking an Order of Possession on the basis of the 1 Month Notice. Based on the testimony of the tenant I find that they were served with the landlord's evidence in accordance with section 88 of the *Act*.

As the tenant is aware of the contents of the landlord's application, I find no issues of procedural fairness or undue prejudice and pursuant to section 71 I find that the tenant has been sufficiently served with the landlord's application.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on May 1, 2019. The monthly rent is \$1,350.00 payable on the first of each month. A security deposit of \$675.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a detached home with 3 suites. The landlord occupies the main portion of the building with another occupant in the remaining suite.

The landlord issued a 1 Month Notice dated September 1, 2021. The tenant filed their application for dispute resolution on September 8, 2021. The 1 Month Notice provides the reasons for the tenancy to end as:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*

The landlord submits that the condition of the rental unit poses a danger to the property and other occupants as there is excess clutter. The landlord says that the amount of debris and clutter in the suite puts the property at significant risk of fire damage as it is not possible to access closets or storage spaces and perform general maintenance or inspections. The landlord believes that the condition of the rental unit may lead to rodent and bug infestations. The landlord says that the rental building is over 115 years old and therefore more vulnerable to fire. They say that the tenant was advised on multiple occasions to reduce the amount of possessions in the rental suite but the tenant has not complied with their directives. The landlord submits photographs of the suite into documentary evidence.

The landlord also gave some testimony that they believe the tenant places notes on vehicles of visitors and complaints about the tenant's cat. The landlord confirmed that they have no evidence of the tenant placing notes on vehicles.

Analysis

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In the present case the tenant confirmed receipt of the 1 Month Notice on September 1, 2021 and filed their application to dispute the notice on September 8, 2021. I find that the tenant was within the statutory timeline to file their application to dispute the notice.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

Taken in its totality I find the landlord has not met their evidentiary onus on a balance of probabilities to establish that there is any basis for the 1 Month Notice.

I find no evidence of any illegal activity on the part of the tenant. The sole submission made by the landlord for this portion of the notice is that they believe that the tenant leaves notes on vehicles visiting the rental property. Not only is leaving notes not an illegal activity but the landlord confirmed they have no copies of any notes nor any evidence that this has occurred.

I find the landlord's complaints about the tenant having a pet cat to not be supported in any of the evidentiary materials and have little credibility. In any event I find the tenant's possession of a pet cannot reasonably be considered to be an act that unreasonably disturbs others, jeopardizes health or safety or poses a risk to the property.

The landlord's central submission is that they believe the condition of the rental unit causes significant risk to the property. I find little evidence to support the landlord's claim. I find the photographs submitted into evidence by the landlord to show a rental unit that contains personal possessions and items. I do not consider the volume of items or the manner in which these items are organized to be unreasonable. The photographic evidence shows some boxes stacked together in areas of the suite. Items are primarily placed against walls or other areas where the tenant does not need to access. One photograph shows an electrical octopus extension with two items plugged in.

I find the landlord's submissions to be hyperbolic and not supported in their own documentary materials. I find the tenant's storage of items in their rental unit to be reasonable and not so haphazard as to be considered a danger to the property or others. The tenant's choice to utilize their closet or crawlspace for storage is in line with the intended use of such areas. I find the tenant's use of electrical outlets to be reasonable and pose no greater risk of fire or shorts than would ordinarily be found in a property of this age. I find the landlord's concerns about risk of fire or damage to the property to have no foundation and be wholly unreasonable fears given the evidence.

Based on the evidence I find no basis for the issuance of the 1 Month Notice and accordingly grant the tenant's application for its cancellation. The 1 Month Notice of September 1, 2021 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

As the tenant was successful in their application, they are entitled to recover their filing fee from the landlord. As this tenancy is continuing I allow the tenant to satisfy this

monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The landlord's application is dismissed.

The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: January 20, 2022

Residential Tenancy Branch