



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* ("Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated November 5, 2021 ("First 1 Month Notice");
- cancellation of a One Month Notice to End Tenancy for Cause dated November 24, 2021 ("Second 1 Month Notice"); and
- authorization to recover the filing fee pursuant to section 72.

The Landlord's agent ("CC") and one of the two the Tenants ("AB") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

AB testified she served the Notice of Dispute Resolution Proceeding ("NDRP") through the Landlord's mail slot. Although the NDRP was not served using a method set out in section 89 of the Act, CC acknowledged the Landlord had received the NDRP. I find that NDRP was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

AB testified she served an evidence package on the Landlord by registered mail on November 18, 2021. AB provided the tracking number of the package to corroborate her testimony. CC acknowledged receipt of the Tenants' evidence package. I find the Tenants' evidence package was served on the Landlord in accordance with section 88 of the Act.

CC testified the Landlord served an evidence package on the Tenants by registered mail on November 30, 2021. CC provided the tracking number of the package to

corroborate her testimony. AB acknowledged receipt of the Landlord's evidence package. I find the Landlord's evidence package was served on the Tenants in accordance with section 88 of the Act.

Preliminary Matter – Service of Tenant's Amendment

AB testified that she filed an amendment (the "Amendment") with the Residential Tenancy Branch to dispute the Second 1 Month Notice. AB stated that she served the Amendment on the Landlord through the Landlord's mail slot. CC stated that the Landlord did not receive the Amendment and the Landlord was not aware that the Tenant had disputed the Second 1 Month Notice.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

When a landlord serves a second One Month Notice on the Tenant that is intended to replace the first One Month Notice because the Landlord failed to complete the first One Month Notice as required by section 52 of the Act, it would be reasonably anticipated that a tenant who disputed the first One Month Notice would dispute the second One Month Notice. Based on the above, I find the Landlord should have reasonably anticipated that the Tenants would dispute the Second 1 Month Notice. Based on the above, I amend the Tenants' application to add the Tenants are disputing the Second 1 Month Notice.

Issues to be Decided

- Are the Tenants entitled to cancellation of the First 1 Month Notice?
- Are the Tenants entitled to cancellation of the Second 1 Month Notice?
- If the Tenants fail in their application to cancel the First 1 Month Notice and Second 1 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?
- Are the Tenants entitled to recover the filing fee for his application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' application and my findings are set out below.

The tenancy commenced on December 1, 2014, with rent of \$1,122.00 payable on the last day of each month. The Tenants were to pay a security deposit of \$561.00. CC confirmed the Tenants paid the security deposit and the Landlord is holding the security deposit in trust for the Tenants.

CC stated the Landlord served the First 1 Month Notice by attaching a copy to the Tenants' door on November 5, 2021. AB acknowledged the Tenants received the First 1 Month Notice on the door. I find the First 1 Month Notice was served in accordance with section 88 of the Act. Pursuant to section 90 of the Act, the Tenants were deemed to have received the First 1 Month Notice on November 15, 2021. Pursuant to section 47(4) the Tenant had 10 day to dispute the 10 Day Notice, being November 18, 2021. The records of the Residential Tenancy Branch ("RTB") disclose the Tenants made their application on November 8, 2021.

CC stated that the Second 1 Month Notice was served on the Tenants' door on November 24, 2021. AB acknowledged the Tenants received the Second 1 Month Notice on November 24, 2021. AB acknowledged the Tenants received the Second 1 Month Notice on the door I find that Tenants were served with the Second 1 Month Notice on November 27, 2021. Although the Tenant's did not file an Amendment to dispute the Second 1 Day Notice or, alternatively, make an application to dispute the Second 1 Month Notice, under set out under preliminary matters above, As noted above, I have amended the Tenants' application to add that the Tenants are dispute the Second 1 Month Notice.

CC stated she was watering the grounds of the residential premises ("Premises") and noticed a cat in the window of the rental unit. CC stated pets are not permitted in the Premises. CC stated that the tenancy agreement prohibits pets and noted that the tenants had initialed the paragraph to acknowledge they had seen this prohibition and that it was a material term of the tenancy agreement. CC stated that, aside from the pet in the Tenants rental unit, there was only one other pet in the Premise. However, the tenant who had the pet was moving out of their rental unit and the Landlord did not want

any pets in the building. CC stated the Tenants were served with a warning letter dated August 4, 2021, in which the Landlord stated that it had come to its attention that the Tenants had a pet and that it was in violation of the tenancy agreement. The Landlord asked that the Tenants remove the pet before October 4, 2021. CC stated that Landlord served a second letter dated October 7, 2021, in which it advised that. if the Tenants did not remove the pet by the end of October, then the Landlord would serve the Tenants with a One Month Notice to End Tenancy.

AB stated that, when they moved into the Premises, there were a number of tenants who had pets that had been grandfathered. AB stated that there was a problem with rats around the residential premises and that resident manager at the time of the Tenant's move-in told her it was okay for the Tenants to have a cat. AB stated the Tenants obtained a letter (the "Letter") from the person ("TO") who acted as resident manager of the residential premises prior to CC which stated:

[Names of the two Tenants] have lived at [Name of Premises] since 2014. They live in [Rental Unit Number] at this time. I am the Resident Manager of [Name of Premises] which is located at [Address of Premises]. I started the position on December 21, 2021. I was trained briefly by another [Name of Landlord]'s Resident Manager by the name of [Name]. She told me there were at the time many pets in the building that were "Grandfathered In" or had a compassion pet when they moved in. This information was confirmed during a phone call with head office with the controller [Name of Controller] in the spring of 2021. I am writing this letter as authorisation that I am aware the above-mentioned residents are allowed to have their cat reside in the building based on the information I received and confirmed.

If anyone has any questions or concerns please do not hesitate to contact me at [Phone Number].

AB acknowledged the Tenants received the warning letters dated August 4, and October 7, 2021.

CC acknowledged TO was a former resident manager of the Premises. CC stated the Landlord was not aware of the Letter until it was served on the Landlord with the Tenants' evidence package. CC submitted the Letter was illegitimate because TO was not authorized by the Landlord to provide it to the Tenants and the Letter was not on the Landlord's letterhead stationery. CC submitted I should not believe the AB since the

resident manager at the time the Tenant's moved into the rental was not present at the hearing.

Analysis

Section 52 of the Act states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

The Landlord did not provide any details of the cause for ending the tenancy in the First 1 Month Notice. I find the First 1 Month Notice does not comply with the content requirements of section 52. Based on the above, I cancel the First 1 Month Notice.

Section 47(1) of the Act states in part:

- 47(1)** A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
- [...]
- (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;

CC submitted TO did not have any authority from the landlord to provide the Letter to the Tenants, was not on the Landlord's letterhead and, therefore, the Letter was illegitimate. The Letter provides information that was within the knowledge of TO. TO did not state he gave the Tenants permission to have the cat in the rental unit. A person is free to provide information within their knowledge unless they are prohibited from

doing so pursuant to law or pursuant to a non-disclosure agreement. CC did not cite any law that prohibited TO from providing the Tenants with the Letter nor did she submit a copy of a non-disclosure agreement that prohibited him from disclosing the information contained in the Letter. Accordingly, I find no reason the Letter should not be accepted into evidence for this proceeding.

Although the tenancy agreement prohibits pets, AB testified the Tenants obtained permission to have the cat from the resident manager of the residential premises at the time the Tenants moved into the rental unit. In the Letter, TO stated "I am writing this letter as authorisation that I am aware the above-mentioned residents are allowed to have their cat reside in the building based on the information I received and confirmed.". CC did not submit any evidence on behalf of the Landlord, or call any witnesses, to challenge the information set out in the Letter. Based on the contradictory evidence of the Landlord and the Tenants, I am unable to determine whether the Tenant had permission from TK to keep the cat in the rental unit. However, the burden of proof is on the Landlord in these circumstances and there is insufficient evidence before me to find in favour of the Landlord. I find the Landlord has not met its evidentiary burden of showing, on a balance of probabilities that the tenancy should be ended for cause under section 47(1)(1) based on the reason stated on the Second 1 Month Notice.

Based on the above, I allow the Tenants' application and cancel the Second 1 Month Notice. This tenancy continues until ended in accordance with the Act.

As the Tenants have been successful in this application, I grant the Tenants recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenants are allowed to enforce this order by deducting \$100.00 from the next month's rent and notifying the Landlord when this deduction is made. The Landlord may not serve the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenants.

Conclusion

The First 1 Month Notice and Second 1 Month Notice are cancelled.

The Tenants are ordered to deduct \$100.00 from next month's rent in satisfaction of their monetary award for recovery of the filing fee.

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: February 6, 2021

Residential Tenancy Branch