



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, RP, LRE, LAT, FFT

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord;
- an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord;
- an order requiring the landlord to make repairs to the rental unit;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- authorization to change the locks to the rental unit; and
- to recover the cost of the filing fee.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

The tenant provided no documentary evidence prior to the hearing other than a receipt for the Canada Post registered mail.

The landlord provided documentary evidence and the tenant confirmed receipt of most of the pages. The tenant was not specific as to which page he did not receive and I

advised him that if the landlord referred to evidence in the hearing that he did not have to inform me. The tenant did not make any such comments during the hearing.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 10 Day Notice and the 1 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 tenant's request to cancel the 10 Day Notice, the 1 Month Notice and recovery of the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice and/or the 1 Month Notice?

Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

The tenant submitted that he moved into the rental unit in May 2021, which was the lower level of a two-story home. The evidence shows the landlord purchased the residential property from the previous owner in September 2021, and took ownership in October 2021. The previous owner is now a tenant living in the upper level of the home.

The monthly rent is \$1,600.

The tenant was unable to provide clear evidence of the date he received the 10 Day Notice or the 1 Month Notice. The tenant said that he stays out of province for weeks in remote locations for work related purposes, and has sporadic internet service.

The tenant submitted that he filed the application to dispute the Notices as soon as he could under those circumstances.

The landlord submitted that he posted the 10 Day Notice on the door, and when he did, the tenant's girlfriend took the document. The landlord submitted that he also served the tenant by email.

The landlord submitted that the 1 Month Notice was attached to the door on December 14, 2021. The landlord confirmed that he knew the tenant was out-of-province during these times.

The tenant's application was made on December 24, 2021.

I will address the timelines between service of the two Notices and the tenant's application within this Decision.

The hearing proceeded on consideration of the two Notices.

10 Day Notice –

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The 10 Day Notice filed in evidence was dated December 3, 2021, for an effective move-out date of December 13, 2021. The Notice indicated that the monthly rent of \$1,600 for December 2021 was not paid by December 1, 2021.

The landlord asserted that since the issuance of the Notice, the tenant has paid all the monthly rent, with a payment of \$1,000 on December 11, 2021 and two payments of \$300 on December 12, 2021. The landlord confirmed that the tenant has paid all other rent due since that time.

The tenant said the monthly rent for March 2022, was also paid.

The tenant submitted that he has always been on time or early with monthly rent and does not understand why the landlord had any issues with the rent payment, as he had been in contact with him during this time.

1 Month Notice –

The Notice was dated December 14, 2021, and listed an effective end of tenancy of January 31, 2021. The landlord filed a copy of the Notice.

The causes listed on the Notice alleged that the tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,
- put the landlord's property at significant risk; and
- has engaged in illegal activity that has or is likely to have jeopardized a lawful right or interest of another occupant or the landlord.

In support of the Notice, the landlord submitted the tenant has erected a gazebo at the base of the outdoor steps leading from the upper rental unit to the backyard, which prevents the upper tenant from using those stairs. Filed in evidence was a photograph showing the location of the gazebo.

The landlord submitted that the RCMP has attended the rental unit to deal with domestic disputes between the tenant and his girlfriend. The landlord wrote in the Details of Causes section that the RCMP attended the rental unit “for domestic disputes. I receive complaints from the neighbour about the constant yelling and swearing and never ending fighting, my tenants in the upper unit complain that they do not have enjoyment of the outside back yard for their children to play as the children are infear, late payments of rent defying a ten day notice and paying in 3 separate installments the last 2 instalments for use and occupancy on the 7th and 8th day after service of 10 day notice.”

The landlord said the upper tenants were afraid to send their children outside, that the tenant was smoking weed, had fires in the backyard, and were afraid due to the domestic disputes.

Filed in evidence by the landlord were photographs, a text message from the tenant's apparent girlfriend, and a text message from the tenant asking for the RCMP reports.

The tenant said that the RCMP have never been called to deal with him in anyway, but said they were called before the landlord took ownership because a couple had been fighting. The tenant said that he had nothing to do with this couple, as he did not invite them over and they were not there at his invitation. The tenant submitted that the landlord has not provided him RCMP reports or other documents.

The tenant said that no one told him about a problem with the gazebo and that anyway, the gazebo was made of fabric and had zippers, which meant anyone could walk through it.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, and policy, on the balance of probabilities.

10 Day Notice –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

The Notice also explains that if the tenant did not pay the overdue rent or file an application to dispute the Notice within five days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, or in this case, December 13, 2021.

In this case, the tenant did file an application on December 24, 2021, and the monthly rent was paid in its entirety by December 12, 2021.

I find there was insufficient evidence to substantiate the date the tenant received the 10 Day Notice. I accept that the tenant was out-of-province and in a remote location with sporadic internet service. I find it reasonable to conclude that the tenant did not have access to the email service by the landlord immediately after it was served. I find I am unable to determine if the tenant was not in time in making rent payments.

As the monthly rent was fully paid and has been fully paid for January, February and March 2021, I decline to uphold the 10 Day Notice.

For this reason, I grant the tenant's application to cancel the 10 Day Notice.

1 Month Notice –

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

When a tenant disputes a Notice to end a tenancy, the onus of proof is on the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

For the reasons stated in the consideration of the 10 Day Notice, I likewise find insufficient evidence to show when the tenant received the 1 Month Notice. As a result, I find the tenant filed their application in time.

I must consider whether on the day the Notice was issued, the landlord had sufficient cause to end the tenancy.

I have reviewed the Notice and I find the landlord did not provide sufficient Details of Causes and I therefore find the Notice insufficient for the tenant to properly rebut the Notice.

The landlord is instructed on the Details of Causes to describe what, where, and who caused the issue and included dates/times, names, etc. The landlord, on the Notice form, is informed that this evidence is required, or the Notice may be cancelled.

In this case, the landlord did not provide dates/times or names on the Notice. The landlord mentioned the RCMP being called out, but there was no proof of when and where this happened or the results of the call-out. Also, the landlord mentioned complaints from the neighbours, but I find neighbour complaints are not covered by the Act in ending a tenancy.

The landlord failed to provide evidence or statements or details from the upper tenants as to why they are afraid to use the backyard. Also, I do not find evidence that the landlord has investigated these complaints to determine their validity. I find it is a landlord's obligation to ensure that each of the tenants have quiet enjoyment and without investigating the complaints, I find the landlord is not likely to prevail.

As to the landlord mentioning a single late payment of rent, I find that is not listed as a cause to end the tenancy under section 47 of the Act.

Although the landlord mentioned the tenant placing a gazebo at the base of the outdoor stairs, that issue was not listed on the 1 Month Notice.

As a result of the above, I find the landlord has not laid a foundation in this Notice as it did not list what, where, and who, with the dates/time and names.

For these reasons, I find the Notice does not comply with section 52(d) and (e) of the Act and is invalid as it does not state the "Details of Cause(s)" portion which would set out the specific allegations of the causes listed by the landlord on the Notice. Therefore, I find the Notice is not valid as it is missing necessary and required information. The Act requires that notices to end tenancy issued by the landlord be in the approved form due to the fact that the approved forms contain all of the required information a tenant would need to dispute the Notice, if necessary.

As a result, I ORDER that the 1 Month Notice is cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the Act.

As I have cancelled the two Notices, I grant the tenant recovery of the filing fee of \$100. The tenant is authorized to deduct \$100 from a future monthly rent payment in satisfaction of their monetary award. The tenant should inform the landlord when this deduction is made, so that the landlord does not issue the tenant a 10 Day Notice to End Tenancy for Unpaid Rent.

I caution the landlord that in the future, they may wish to issue written warnings to the tenants regarding any issues with the tenancy and allow the tenant to address these concerns.

Conclusion

The tenant's application to cancel the 10 Day Notice and the 1 Month Notice is granted.

The 10 Day Notice dated December 3, 2021, for an effective move-out date of December 13, 2021 and the 1 Month Notice dated December 14, 2021, for an effective move out date of January 31, 2022 are cancelled. The tenancy will continue until it is ended in accordance with the Act.

The tenant is granted recovery of the filing fee of \$100, to be redeemed by deducting \$100 from a future monthly rent payment.

The balance of the tenant's application not dealing with cancellation of the Notices was severed and dismissed, with leave to reapply.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 18, 2022

Residential Tenancy Branch