



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Norco Apartments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 8, 2021, in accordance with Section 89. The tenant also testified that he has confirmed through Canada Post tracking information that the landlord received this registered mail on December 10, 2021

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim for compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claim is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to

dismiss the tenant's claim for compensation. I grant the tenant leave to re-apply for his other claim.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Should the tenant fail to succeed in cancelling the One Month Notice to End Tenancy for Cause it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on November 2, 2021 for a one year fixed term tenancy beginning on November 1, 2021 for a monthly rent of \$885.00 with a security deposit of \$442.50 paid. The tenancy agreement does not stipulate what day of the month rent is due; and
- A copy of the first two of three pages of a One Month Notice to End Tenancy for Cause issued by the landlord on November 28, 2021 with an effective date of December 31, 2022 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the tenant has not done required repairs of damages to the unit. In the "Details of the Events" section of the notice the landlord wrote:
 - "I switched tenant from suite 304 – to 306 and tenant changed the fridge from 304 to 306. The fridge is new on 304 and registered only for 304 also the fridge has right hinge supposed to be at #304."

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- b) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;

I note that in an Application for Dispute Resolution where the tenant is seeking to cancel a notice to end tenancy the burden rests with the landlord to attend a hearing and present their evidence to establish that they have cause to end the tenancy.

As the landlord has failed to attend this hearing and present any evidence in support of the One Month Notice to End Tenancy for Cause issued to the tenant on November 28, 2021, I find the landlord has failed to establish they have cause to end the tenancy.

Based on the above, I grant the portion of the tenant's Application seeking to cancel the Notice to End Tenancy. In addition, as the tenant was successful in his Application, I find that he is entitled to recover the \$100.00 filing fee for the cost of this Application from the landlord.

Conclusion

I order the One Month Notice to End Tenancy for Cause dated November 28, 2021 is cancelled and is of no force or effect. I order the tenancy will continue until ended in accordance with the *Act*.

I also order the tenant is entitled to deduce \$100.00 from future rent payments until the full amount is recovered, pursuant to Section 72(2)(a).

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: March 10, 2022

Residential Tenancy Branch