



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: OPC FFL
Tenants' application: CNC OLC DRI FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on a 1 Month Notice to End Tenancy for Cause dated November 19, 2021 (1 Month Notice) and to recover the cost of the filing fee. The tenants applied to cancel the 1 Month Notice, to dispute a rent increase, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants, and an agent for the landlord, HB (agent) attended the teleconference hearing. An opportunity was given to ask questions about the hearing process. The parties were introduced and thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenant claims that they were advised that the RTB would serve their application on the respondent, which is not correct and is not what is listed in the tenants' Notice of Dispute Resolution Proceeding dated December 7, 2021 (Notice of Hearing). The agent testified that they were not served with any application from the tenants. As a result, I have dismissed the tenants' entire application with leave to reapply due to a service issue. As the tenants confirmed that they received the landlord's application and the

documentary evidence, I find the tenants were sufficiently served in accordance with the Act.

Given the above, the hearing continued with consideration of the landlord's application only.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession based on the 1 Month Notice?
- If yes, is the landlord also entitled to recover the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy agreement began on October 1, 2019. Monthly rent was \$1,000.00 per month and due on the first day of each month. The tenants paid a \$380.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord listed one reason on the 1 Month Notice as follows:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Detail(s) of Cause section of the 1 Month Notice reads as follows:

Details of the Event(s):

As per the residential tenancy agreement dated October 1, 2019, the only occupants permitted to reside in the unit are the tenants listed on the agreement, which are [REDACTED]. There is an additional occupant that is residing in the unit without the written permission of the landlord, which is in contravention of the tenancy agreement. A breach letter was issued requesting the contravention be rectified in a reasonable time frame, but the tenants did not comply with the request to comply with the lease.

The agent referred to section 6 of the tenancy agreement and claims that the tenancy agreement prohibits any more than 2 tenants in the rental unit. Section 6 of the tenancy agreement reads as follows:

6. The person(s) listed above shall be the only permanent occupant(s) of the premises herein. When a guest remains for a continuous period of in excess of two weeks then they shall be "deemed" to be a permanent occupant under the agreement. Such additional permanent occupants are not acceptable to the Landlord unless permission is given in writing. Additional permanent occupant(s) must make application of tenancy and sign a tenancy agreement, if approved by the Landlord. Without permission, this agreement will be breached and the landlord may then issue termination notice. Under no circumstances, including any natural increase in the Tenant's family, shall the number of permanent tenants exceed 3.

The agent was advised that their section 6 of the tenancy agreement lists the maximum number of tenants to be 3 and did not match 2 as stated by the agent. The agent stated that the tenants did not seek written permission from the landlord to increase the number of tenants from 2 to 3.

The parties were advised that when a term is either contradictory or confusing, it cannot be enforced under the Act, which I will address further below.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

In the matter before me, the landlord is seeking to enforce a 1 Month Notice that lists 1 cause, which alleges a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Although the tenants' application was dismissed due to a service issue, in the interests of fairness, as the tenants did apply to dispute the 1 Month Notice and paid a filing fee to do so, I will consider the merits of the 1 Month Notice as I find it would be prejudicial to the tenants not to do so when there was a reasonable attempt made to dispute the 1 Month Notice. I have also considered that the tenants' application was filed within 15

days of November 27, 2021, the date they received the registered mail from the landlord, according to their application.

Given the above, I find the landlord has the burden of proof to provide sufficient evidence to support the only cause listed on the 1 Month Notice. I will address section 6 of the tenancy agreement and whether or not it can be enforced.

Contra Proferentem is a rule courts use when interpreting contracts. In plain English it means that if there is an ambiguous clause in a contract it will be interpreted against the party responsible for drafting the clause. I find section 6 of the tenancy agreement was left open to interpretation, as I find that the landlord claims the maximum number of tenants can be 3, yet the agent stated 2 during the hearing, which is contradictory. As the landlord was the maker of the contract, ambiguity in the terms of an agreement must be interpreted in favour of the tenant. Therefore, I find that section 6 of the tenancy agreement allows for a maximum of 3 tenants in the rental unit. I have reached this finding as the parties confirmed the rental unit is a 2-bedroom unit.

I afford very little weight to the agent's assertion that the tenants did not obtain written agreement from the landlord as section 6 of the tenancy agreement also states that 3 permanent tenants shall not be exceeded. Therefore, I find section 6 of the tenancy agreement to be ambiguous as a result and therefore not enforceable in terms of evicting the tenants when 3 people are residing in the rental unit.

Given the above, **I find** the landlord has failed to meet the burden of proof to support the reason listed on the 1 Month Notice. Consequently, **I cancel** the 1 Month Notice dated November 19, 2021, due to insufficient evidence.

I ORDER the tenancy to continue until ended in accordance with the Act.

Neither party will be awarded the filing fee as the landlord's application failed and the tenants' application resulted in a service issue.

Conclusion

The 1 Month Notice dated November 19, 2021, has been cancelled and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the Act.
The filing fees are not granted.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2022

Residential Tenancy Branch