



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDCT OLC DRI PSF

Introduction

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) by the tenants to cancel a 1 Month Notice to End Tenancy for Cause dated November 30, 2021 (1 Month Notice), for a monetary claim of \$2,150.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to dispute a rent increase, for an order against the landlord to provide services or facilities agreed upon but not provided, and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The tenants and an agent for the landlord, Kevin Tam (agent) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The agent confirmed that the landlord did not submit any evidence in response to the tenant's application. The agent confirmed that they were served with the tenant's application and documentary evidence (1 Month Notice) and had the opportunity to review that evidence prior to the hearing. I find the landlord was sufficiently served under the Act based on the above.

Preliminary and Procedural Matters

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

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on their application, the most urgent of which is the application to cancel 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 tenants' request to cancel the 1 Month Notice at this proceeding. The balance of the tenants' application is dismissed, **with leave to re-apply**.

Issue to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence by either party. The parties confirmed that there was a written tenancy agreement; however, it was not submitted in evidence. The parties agreed that the tenancy began on March 1, 2019. Monthly rent is \$1,200.00 per month and is due on the first day of each month.

The tenants write that they were served with the 1 Month Notice on November 30, 2021. The tenants filed to dispute the 1 Month Notice on December 6, 2021. The effective vacancy date is listed as January 1, 2022.

In the 1 Month Notice, the landlord has alleged 2 causes, namely:

- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☒ 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

In the Details of Cause(s) section of the 1 Month Notice, the landlord writes as follows:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): Oct 4/2021 - Police incident Case # VPD [REDACTED] causing disturbance to landlord, neighbours and other tenant. Nov. 25/2021 - Entered unit to fix circuit breaker for other tenant noticed excessive hoarding, unsanitary living conditions, also noticed strong odors, on going issue constantly yelling and screaming can be heard coming from unit, Profanity constantly being shouted. Causing a disturbance to landlord, neighbours and other tenant.

The agent confirmed that the landlord did not submit any documentary evidence to support either cause alleged in the 1 Month Notice.

The landlord did not submit any documents or present any witnesses to support that the tenants have caused a disturbance and provided no photo evidence to support "excessive hoarding, unsanitary living conditions" or any recordings or witnesses to support constant yelling and screaming being heard from the unit.

The tenants do not agree with any of the accusations in the 1 Month Notice.

Analysis

Based on the above, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of January 1, 2022. The tenants disputed the 1 Month Notice on December 6, 2021, which is within the 10-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence in support of the 1 Month Notice, nor did they call any witnesses or submit any audio recordings. An allegation without supporting evidence to support that allegation, such as witness testimony or a statement from a witness, or photo evidence and/or audio recordings is not sufficient evidence to prove a 1 Month Notice, especially when the tenants dispute the allegations on the 1 Month Notice. At the very least, I would have expected the landlord to have submitted documentary evidence such as witness statements or have called at least one witness during the hearing.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the landlord has the onus of proof to prove that the 1 Month Notice is valid. Based on the above, I find the landlord has provided insufficient evidence to prove that the 1 Month Notice dated November 30, 2021 is valid. Therefore, **I cancel** the 1 Month Notice dated November 30, 2021 as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

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

Conclusion

The 1 Month Notice issued by the landlord dated November 30, 2021 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

The decision will be emailed to both parties as confirmed during the hearing.

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 23, 2022

Residential Tenancy Branch