



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: LRE, CNC
 LL: OPC, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on January 6, 2022 (the “Tenants Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a One Month Notice for Cause dated December 6, 2021 (the “One Month Notice”); and
- an order for the landlord to comply with the Act, tenancy agreement or regulation.

The Landlord’s Application for Dispute Resolution was made on January 8, 2022 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for cause; and
- an order granting the recovery of the filing fee.

The Tenant T.S., the Tenant’s Translator R.G., the Landlord, and the Landlord’s Agent J.V. attended the hearing at the appointed date and time. At the start of the hearing, both parties confirmed service and receipt of their respective Applications and documentary evidence packages. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to an order that the Landlord comply with the *Act*, pursuant to Section 62 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 47 and 55 of the *Act*?
4. Is the Landlord entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2017. Currently, the Tenants pay rent in the amount of \$2,298.00, which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,075.00, which the Landlord continues to hold.

The Landlord's Agent testified that she served the Tenants in person with a One Month Notice on December 6, 2021 with an effective vacancy date of January 20, 2022. The Landlord's Agent stated she they left a copy of the One Month Notice with the Tenant on December 6, 2021. The Landlord stated that the Tenant refused to sign the proof of service document, however, the Landlord's Agent had a witness with her, who signed as a witness confirming the Tenants were served in person hand to hand with the One Month Notice on December 6, 2021. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord."

The Landlord stated that the One Month Notice was served to the Tenants in relation to ongoing issues with the Tenants regularly playing the piano in their rental unit which has generated many complaints from other occupants at the rental property. The Landlord provided copies of the written complaints in support. The Landlord stated that the

Tenants have been cautioned on several occasions, however, the Tenants continue to play their piano regardless, which is impacting the quiet enjoyment of other who reside in close proximity.

In response, the Tenant stated that he did not receive the One Month Notice until January 6, 2022 at which point he immediately disputed the One Month Notice. The Tenant confirmed that the Landlord's Agent attended the rental unit on December 6, 2021, however, denied that the Landlord left a copy of the One Month Notice with him, therefore, he was unaware that the Landlord was seeking to end the tenancy until January 6, 2022.

The Tenant stated that his daughter is a competitive piano player and therefore needs to practice regularly for auditions. The Tenant stated that they have been adhering to the Landlord's request to play during certain times and are attempting to remain respectful of their neighbours. The Tenant stated that playing the piano is not against the rules and wishes to continue the tenancy.

Analysis

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

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord provided a witnessed proof of service indicating that the Landlord's Agent served the Tenant in person on December 6, 2021 with a One Month Notice to End Tenancy for Cause dated December 6, 2021 with an effective vacancy date of January 20, 2022. While the Tenant stated that the Landlord did not leave a copy of the One Month Notice with the Tenant on December 6, 2021, I find that the Landlord provided sufficient evidence to demonstrate the One Month Notice was served to the Tenant hand to hand on December 6, 2021. Pursuant to Section 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the One Month Notice on December 6, 2021.

Section 47(4) of the Act provides that a Tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute the notice. After having been deemed served with the One Month Notice on December 6, 2021 the Tenant had until December 16,

2021 to dispute the One Month Notice. I find that the Tenants filed their Application on January 6, 2022 which is outside the timeframe permitted under the *Act*.

Section 47(5) of the *Act* states that if a Tenant who has received a Notice does not make an Application for Dispute Resolution in accordance with Subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

I find that the Tenants' Application was made well outside the 10 days permitted under the *Act*. I further find that the Tenants have not applied for more time to cancel the Notice for an extenuating circumstance. I do not accept that the Tenant only received the One Month Notice on January 6, 2022. I find that the Tenants are conclusively presumed to have accepted the end of her tenancy on the effective date of the One Month Notice. I therefore dismiss the Tenants' claim to cancel the One Month Notice dated December 6, 2021 without leave to reapply.

With respect to the Tenant's claim for an order restricting the Landlord's right to enter the rental unit, I find that the Tenants provided insufficient evidence to demonstrate that the Landlord has breached the *Act* with respect to entering the rental unit. As such, I dismiss this claim without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord.

Section 52 of the *Act* States; 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.

I find that the Landlord served the Tenant with a One Month Notice and selected the grounds for ending the tenancy is;

“Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.”

I find that during the hearing, the Landlord or their Agent made no reference to any illegal activities made by the Tenants. I find that issues surrounding the Tenants playing the piano does not constitute an illegal activity and that the Landlord did not indicate the proper ground for ending the tenancy. I find the One Month Notice does not comply with Section 52 of the *Act*. In light of the above, I cancel the One Month Notice dated December 6, 2021. I order that the tenancy continue until ended in accordance with the *Act*.

The Landlord’s Application for an Order of Possession based on the One Month Notice is dismissed without leave to reapply. As the Landlord was not successful in their Application, I find that they are not entitled to the recovery of the filing fee.

Conclusion

Both the Tenant’s and Landlord’s Applications are dismissed. The One Month Notice issued by the Landlord dated December 6, 2021 is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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: April 08, 2022

Residential Tenancy Branch