



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On December 18, 2021, the Tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated December 9, 2021, (the One Month Notice); and
- the filing fee.

The hearing was attended by the Tenant, her spouse (BF), and the Landlord. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

BF testified that they served three packages to the Landlord: the Notice of Dispute Resolution Proceeding (NDRP) and evidence by registered mail on December 24, 2021, additional evidence by registered mail on March 9, 2022, and a third evidence package served by hand on March 15, 2022. The Landlord confirmed he received the documents as described. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified he served responsive evidence in person on March 15, 2022, and BF confirmed they received it. I find the Landlord served the Tenant in accordance with section 88 of the Act.

Issues to be Decided

- 1) Is the Tenant entitled to an order to cancel the One Month Notice, and if not, is the Landlord entitled to an order of possession?
- 2) Is the Tenant entitled to the filing fee?

Background and Evidence

Those present agreed on the following particulars of the tenancy. It began October 15, 2019; rent is \$3,000.00, due on the first of the month; and the Tenant paid a security deposit of \$1,750.00 and a pet deposit of \$1,750.00, which the Landlord still holds. BF testified it is an eight bedroom home; the Landlord testified it is an eight or nine bedroom home.

The Landlord testified that he purchased the rental in April 2021.

A copy of the One Month Notice was submitted as evidence. The Landlord testified he served the One Month Notice on the Tenant in person on December 9, 2021, and the Tenant testified she received it as described.

The One Month Notice is signed and dated by the Landlord, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The One Month Notice does not give the address of the rental unit.

The One Month Notice indicates the reason for the Notice is that the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to damage the Landlord's property.

The Details of the Events section of the One Month Notice refers to the Tenant conducting a business on the rental property, states that the Landlord has only one-family rental insurance on the property, and refers to illegal short-term rental activity.

The Landlord testified that despite BF stating at the beginning of the tenancy that it was only their family members living in the rental unit, the Tenant has been using the rental to offer illegal Airbnb accommodation, has homestay students, is operating a "rooming house," and is "using the house as a hotel." The Landlord stated the Tenant and BF have denied him entry to the rental unit.

The Landlord testified that he has asked the Tenant and BF for a list of who is living in the home, and the ages and occupations of the occupants, as his insurance provider requested the information, but the Tenant and BF have not provided it.

The Landlord testified that when he went to the house the Tenant and BF stated he could not take pictures; the basement is full of furniture; and the bedrooms have key locks on them, which is not allowed due to fire safety issues.

The Landlord submitted as evidence a letter from the city, dated November 25, 2021, which states that the premises is being used to advertise short-term rental accommodation without a valid business license, in contravention of a city bylaw. A copy of the advertisement enclosed by the city was also submitted as evidence.

The Landlord submitted as evidence a copy of the tenancy agreement and addendum, which includes the following (highlighting as in original):

- Tenant is not allowed to run businesses of any kind within the property area. Short term rental, Airbnb, are NOT allowed on this rental property. the tenant agrees to move out by serving a one month notice upon such activities are reported.

The Landlord testified that he has a single-family occupancy permit from the city, and single-family house insurance, but the Tenant and BF are using the house for business. The Landlord submitted that “if anything happens,” his insurance will deny the claim, leading to serious financial difficulties for him. The Landlord testified that business insurance is required for the Tenant’s business activities.

BF testified that after they got the warning letter from the city regarding the short-term rentals, they took steps to cancel the Airbnb account, and submitted as evidence an account cancellation notice from the company.

BF testified that he and the Tenant host international students, who stay for the school year. BF testified that when the Tenant was considering renting the property, before the current Landlord purchased it, the Tenant told the rental agent about the homestay students, reached a verbal agreement with him that she could host students in the property, and so signed a tenancy agreement to rent the property.

BF testified that the Landlord viewed the home both before and after the closing of the sale of the home. The Tenant testified that they have always been transparent about their use of the home, and submitted that the Landlord “knew what was happening” in the home prior to purchasing it.

The Tenant testified that some of the international students are “stuck there” because of COVID, and that there is a lot of furniture in the basement because it belongs to some of her other family members who moved into the house during the pandemic, so as to maintain a “small bubble.”

The Tenant testified that she denied the Landlord entry to the rental when he showed up without notice and she and other members of the household were ill with COVID.

Analysis

Based on the testimony of those present, I find the Landlord served the Tenant the One Month Notice on December 9, 2021, in accordance with section 88 of the Act, and that the Tenant received it on the same day.

As the One Month Notice does not give the address of the rental unit, it does not meet the form and content requirements of section 52 of the Act. However, as neither the Tenant nor BF raised this as a point of confusion, I find it reasonable to amend the One Month Notice, pursuant to section 68(1) of the Act, as the Tenant’s name was on the Notice, and I am satisfied that the Tenant and BF were aware that the Notice was regarding the subject rental.

As the One Month Notice was received by the Tenant on December 9, 2021, in accordance with section 47(4) of the Act, the deadline to dispute it was 10 days later: December 19, 2021. As the Tenant applied to dispute the One Month Notice on December 18, 2021, I find she applied within the deadline.

Section 47(1)(e)(i) of the Act states that a landlord may give notice to end the tenancy if the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has caused or is likely to damage the landlord’s property.

The Landlord has provided affirmed testimony and documentary evidence that the Tenant was using the rental to advertise short-term rental accommodation without a valid business license, in contravention of the city’s bylaw.

The Tenant has provided undisputed affirmed testimony and evidence that they are no longer offering short-term rental accommodation.

While in his testimony the Landlord has expressed concerns about insurance matters and questioned the number of people in the home, he has not provided testimony or evidence that illegal activity is currently occurring in the home, or how that illegal activity has caused or is likely to cause damage to the property.

Based on the evidence before me, and on a balance of probabilities, I find the Landlord is not entitled to an order of possession because the Landlord has failed to demonstrate that the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has caused or is likely to damage the Landlord's property.

Therefore, the One Month Notice is cancelled.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant is successful in her application, I order the Landlord to pay the \$100.00 filing fee the Tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the Tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The Tenant's application is granted. The tenancy will continue until it is 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