



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, OLC, MNDCT, CNC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began some years ago. The current monthly rent is \$1,320.00 payable on the first of each month. The rental unit is a suite in a detached home. The landlord resides in another suite in the property with an unrelated occupant residing in a third suite.

The landlord issued a 1 Month Notice dated April 26, 2022. The reasons provided on the notice for the tenancy to end is that that tenant has seriously interfered with or unreasonably disturbed another occupant or the landlord and have put the landlord's property at significant risk.

The landlord provided some written details of their cause on the Notice provided written submissions in their evidence package and gave lengthy rambling testimony which occupied most of the hearing time. The landlord complains about various aspects of the tenancy including their belief that the tenant has caused damage to the foliage on the property, various complaints made by the tenant regarding the condition of the suite to the municipality, failure to pay rent as required under the tenancy agreement, the landlord's belief that the tenant has stolen mail, and failed discussions with the tenant to vacate the rental unit.

The tenant disputes the landlord's submissions in their entirety and says there is no basis for the tenancy to end.

The tenant submits that they were originally given exclusive use of the yard of the rental property and they maintained it at their own expense. The tenant says that the use of the landlord was taken from them without proper notice and they now seek a monetary award including a rent reduction for the loss in the value of the tenancy as they no longer have access to the yard. The tenant also seeks compensation for various materials they say were taken from the yard such as flowers, plants and fencing materials.

Analysis

Pursuant to Residential Tenancy Rule of Procedure 6.6 the onus to establish the claim generally lies with the applicant. However, when a tenant applies to dispute a notice to end tenancy the onus to prove the reason to end the tenancy falls on the landlord.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

In the present case the parties agree that the tenant was served with the 1 Month Notice of April 26, 2022 on that date. The tenant filed their amendment to the application to dispute the 1 Month Notice on April 29, 2022, within the ten days provided under the *Act*.

Based on the totality of the evidence I am unable to find that the landlord has established a basis for this tenancy to end. I find the landlord's evidence consists of complaints and grievances that are not supported in the documentary materials or do not reasonably amount to what would be considered a serious interference or unreasonable disturbance. I do not find that reporting deficiencies in electrical wiring or any issues with the property can be considered cause for a tenancy to end. I find little evidence that any conduct by the tenant can reasonably be considered to pose any risk to the property. Removal of fences or trees is not an action that I find would be reasonably characterized as a significant risk. I find the landlord's complaints about unpaid rent, previous discussions about vacating the rental unit or other interactions have little to do with the stated reasons on the Notice.

I find that the landlord has failed to establish individually or cumulatively that there is any basis for the tenancy to end as set out on the 1 Month Notice. As I find the landlord has not met their evidentiary burden, I allow the tenant's application and cancel the notice. This tenancy continues until ended in accordance with the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find insufficient evidence in support of the balance of the tenant's application. I find little documentary evidence that the yard of the property was included in the tenancy agreement and that it has subsequently been denied to the tenant. I find the tenant's claims for the costs of flowers, plants or fencing materials are not supported in any documentary materials and the amounts claimed have no explanation as to how the figures were calculated. I find that the tenant has not established any portion of their monetary claim nor demonstrated that there has been a breach on the part of the landlord necessitating an order of compliance and consequently dismiss this portion of the application.

As the tenant was partially successful in their claim I find it appropriate to order partial recovery of the filing fee for this application in the amount of \$50.00. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of \$50.00 from their next scheduled rent payment.

Conclusion

The 1 Month Notice of April 26, 2022 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant is authorized to make a one-time deduction of \$50.00 from their next scheduled rent payment.

The balance of the application is dismissed without leave to reapply.

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: July 18, 2022

Residential Tenancy Branch