



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

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;
- 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.

As both parties were present service was confirmed. The landlord testified that they received the respective materials and had not served any documentary evidence of their own. Based on their testimonies I find the landlord duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to 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 tenancy originally began on July 1, 2020. The current monthly rent is \$1,520.00 payable on the first of each month. A security deposit of \$749.00 was collected at the start of the tenancy and is held by the landlord. The rental unit is a 2-bedroom duplex unit. The occupants of the rental unit is the tenant, their spouse and their four children aged 7, 5, 2, and 18 months.

A copy of the original tenancy agreement signed by the parties was submitted into evidence. The agreement lists the named applicant and their spouse as the tenants and their, at the time, three children as occupants. The agreement contains the standard term clause requiring the tenants to inform the landlord of additional occupants.

The parties agree that the tenant had a new baby on February 23, 2021. The landlord submits that it is unreasonable for a family of 6 to reside in a 2-bedroom property which is not designed for that number of occupants. The landlord testified that there were 5 members in the tenant's family when the tenancy originally began and the tenant informed them in vague terms that there may be another child on the way. The landlord submits that the number of children is unreasonable given the size of the rental property.

The landlord issued a 1 Month Notice to End Tenancy dated April 2, 2022 indicating the reason for the tenancy to end is that the tenant has allowed an unreasonable number of occupants in the unit. The landlord gave lengthy testimony that their delay in issuing a 1 Month Notice was due to the ongoing Covid19 pandemic and not an acceptance of the number of people residing in the rental unit nor a waiver of their right to issue a notice to end tenancy.

Analysis

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.

In the present case the parties agree that the tenant was served with the 1 Month Notice on April 2, 2022 and filed their application to dispute the notice on April 8, 2022. I therefore, find the tenant was within the statutory timeline to dispute the 1 Month Notice.

If a 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. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In this case that the tenant has allowed an unreasonable number of occupants to reside in the rental unit.

Based on the totality of the evidence I find the landlord has not met their evidentiary burden on a balance of probabilities to establish that there is cause for this tenancy to end. I find the landlord's primary objection is based solely on their belief that 6 occupants is unreasonable or a 2-bedroom unit.

I find that the difference between a family of 5 and the addition of a newborn baby to make it a family of 6 is negligible. I find that the number of occupants of the rental unit can not be considered to be unreasonable under the circumstances.

I find the addition of a baby to this living situation does not tip the number of occupants into becoming unreasonable for the rental unit. The tenants are responsible for their own utilities pursuant to the signed tenancy agreement and I find little evidence that the additional member of the family will have any impact on the landlord or the property. This is not a situation where utilities are included in the rent and an additional adult occupant would cause electricity consumption in the property to increase.

I find that what is a reasonable number of occupants for a living space depends on the circumstances. In the present case where the tenants submit that they are able to live comfortably with the addition of a new baby and where they testify that children are close in age and can share bedrooms and living space I find no basis to find the arrangement to be characterized as unreasonable.

Based on the foregoing I find that the landlord has failed to establish that there are an unreasonable number of occupants in the rental unit giving rise to a basis for this tenancy to end. Accordingly, I allow the tenant's application and cancel the 1 Month Notice of April 2, 2022. This tenancy continues until ended in accordance with the Act.

As the tenant was successful in their application, they are also entitled to recover their filing fee from the landlord. As this tenancy is continuing I allow the tenant to satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant's application is granted. The 1 Month Notice of April 2, 2022 is cancelled and of no further force or effect.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: August 5, 2022

Residential Tenancy Branch